

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL :
PRESCRIPTION : MDL No. 2804
6 OPIATE LITIGATION :
_____ : Case No.
7 : 1:17-MD-2804
THIS DOCUMENT RELATES :
8 TO ALL CASES : Hon. Dan A. Polster

9 - - -

10 Monday, January 7, 2019
11 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

12

- - -

13

14 Videotaped deposition of TOM NAMETH, held at
15 the offices of Cavitch, Familo & Durkin,
16 1300 East Ninth Street, Cleveland, Ohio, commencing at
17 9:03 a.m., on the above date, before Carol A. Kirk,
18 Registered Merit Reporter and Notary Public.

19

20 - - -

21

22

23 GOLKOW LITIGATION SERVICES
877.370.3377 ph | 917.591.5672 fax
24 deps@golkow.com

1 A P P E A R A N C E S:

2 On behalf of the Plaintiffs:

3 COHEN & MALAD, LLP

BY: EDWARD "NED" B. MULLIGAN, ESQUIRE

4 nmulligan@cohenandmalad.com

JONATHAN A. KNOLL, ESQUIRE

5 jknoll@cohenandmalad.com

One Indiana Square, Suite 1400

6 Indianapolis, Indiana 46204

317-636-6481

7

8 On behalf of Discount Drug Mart:

9 CAVITCH FAMILO & DURKIN

BY: TIMOTHY JOHNSON, ESQUIRE

10 tjohnson@cavitch.com

1300 East Ninth Street, 20th Floor

11 Cleveland, Ohio 44114

216-621-7860

12

13 On behalf of Cardinal Health, Inc.:

14 PORTER WRIGHT MORRIS & ARTHUR LLP

BY: JILL G. OKUN, ESQUIRE

15 jokun@porterwright.com

950 Main Avenue, Suite 500

16 Cleveland, Ohio 44113

202-443-2508

17

18 On behalf of AmerisourceBergen:

19 JACKSON KELLY PLLC

BY: SANDRA K. ZERRUSEN, ESQUIRE

20 skzerrusen@jacksonkelly.com

50 South Main Street, Suite 201

21 Akron, Ohio 44308

330-252-9060

22

23

24

1 On behalf of Walmart:

2 JONES DAY

BY: ADAM HOLLINGSWORTH, ESQUIRE

3 ahollingsworth@jonesday.com

901 Lakeside Avenue East

4 Cleveland, Ohio 44114

216-586-3939

5

6 On behalf of Endo Pharmaceuticals, Inc. and
Endo Health Solutions Inc. (via teleconference):

7

BAKER & HOSTETLER LLP

8 BY: TERA N. COLEMAN, ESQUIRE

tcoleman@bakerlaw.com

9 127 Public Square, Suite 2000

Cleveland, Ohio 44114

10 216-861-7582

11

12 On behalf of McKesson:

13 ULMER & BERNE, LLP

BY: GREGORY C. DJORDJEVIC, ESQUIRE

14 gdjordjevic@ulmer.com

1660 West 2nd Street, Suite 1100

15 Cleveland, Ohio 44113

216-583-7000

16

17

18 ALSO PRESENT:

19 Tom McConnell, Discount Drug Mart

Mike Newell, Videographer

20 Zach Hone, Trial Technician

21

22

23

24

1 VIDEOTAPED DEPOSITION OF TOM NAMETH

2 INDEX TO EXAMINATION

3 DDM-NAMETH PAGE

4 TOM NAMETH

5 CROSS-EXAMINATION BY MR. MULLIGAN 11

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1	VIDEOTAPED DEPOSITION OF TOM NAMETH		
2	INDEX TO EXHIBITS		
3	DDM-NAMETH	DESCRIPTION	PAGE
4	DDM-Nameth 1	Plaintiffs' Notice of Oral Videotaped Fact Deposition of	69
5		Tom Nameth	
6	DDM-Nameth 2	Discount Drug Mart, Inc. Responses to Plaintiffs' First	77
7		Set of Interrogatories	
8	DDM-Nameth 3	Letter to Sir or Madam from	135
9		Mr. Rannazzisi, dated	
10		February 7, 2007, Bates- stamped DDM00068281 through	
11	DDM-Nameth 4	68284 Letter to Registrant from	184
12		Mr. Rannazzisi, dated	
13		December 27, 2007, Bates-stamped DDM00068279	
14	DDM-Nameth 5	through 68284 E-mail to Mr. Redmond from	210
15		Ms. Strang, dated 5/18/2017, with attachment titled	
16		"Shipments Greater Than 99% of AVG. Movement," Bates-stamped	
17		DDM00053874	
18	DDM-Nameth 6	Letter from Mr. Ratycz, dated	212
19		November 13, 2001, Bates-stamped DDM00011545	
20	DDM-Nameth 7	E-mail to Ms. Twardzik from	220
21		Mr. Nameth, dated 5/14/2005, Bates-stamped DDM00358736	
22	DDM-Nameth 8	E-mail string ending with an	229
23		e-mail to Ms. Biancardi and others from Mr. Ratycz, dated	
24		4/4/2007, Bates-stamped DDM00355119	

1	INDEX TO EXHIBITS (CONT'D)		
2	DDM-NAMETH	DESCRIPTION	PAGE
3	DDM-Nameth 9	E-mail string ending with an	233
4		e-mail to Mr. Bontempo from	
5		Mr. Ratycz, dated 10/1/2008,	
6		Bates-stamped DDM00011543 and	
7		11544	
8	DDM-Nameth 10	E-mail to Messrs. Nameth and	238
9		Hawk from Mr. Steinkerchner,	
10		dated 11/11/2010, Bates-	
11		stamped DDM00003408	
12	DDM-Nameth 11	E-mail string ending with an	253
13		e-mail to Mr. Doug Boodjeh	
14		from Mr. McConnell, dated	
15		9/11/2013, Bates-stamped	
16		DDM00013519 through 13524	
17	DDM-Nameth 12	E-mail string ending with an	276
18		e-mail to Mr. Rehner from	
19		Mr. Nameth, dated 12/4/2013,	
20		Bates-stamped DDM00075841 and	
21		75842	
22	DDM-Nameth 13	E-mail to Ms. Ferut from	290
23		Mr. Nameth, dated 9/9/2013,	
24		Bates-stamped DDM00046047	
25	DDM-Nameth 14	E-mail to All Pharmacists from	293
26		Mr. Ratycz, dated 9/14/2013,	
27		Bates-stamped DDM00261505	
28	DDM-Nameth 15	E-mail to Mr. Glinski from	299
29		Mr. Kistler, dated 11/17/2013,	
30		Bates-stamped DDM00071409	
31	DDM-Nameth 16	E-mail to Mr. Ratycz and	306
32		others from Mr. Glinski, dated	
33		10/2/2014, Bates-stamped	
34		DDM00421435	

1	INDEX TO EXHIBITS (CONT'D)		
2	DDM-NAMETH	DESCRIPTION	PAGE
3	DDM-Nameth 17	E-mail string ending with an e-mail to Ms. Bartish from	311
4		Mr. Nameth, dated 4/18/2014, Bates-stamped DDM00171919	
5		through DDM00171922	
6	DDM-Nameth 18	E-mail string ending with an e-mail to Messrs. Ratycz and	330
7		Nameth from Ms. Golob, dated 8/21/2013, Bates-stamped	
8		DDM00174146 through 174148	
9	DDM-Nameth 19	E-mail string ending with an e-mail to Messrs. Ratycz,	342
10		Glinski, Nameth, and Graf from Ms. Golob, dated 8/21/2013,	
11		Bates-stamped DDM00048217 and 48218	
12			
13	DDM-Nameth 20	E-mail string ending with an e-mail to Ms. Golob and	343
14		Mr. Nameth from Mr. Ratycz, dated 9/18/2013, Bates-stamped	
15		DDM00427343	
16	DDM-Nameth 21	Graphs titled "Hydrocodone Shipments to BD2308155 from	348
17		Discount Drug Mart" and Hydrocodone Shipments to	
18		BD0995095 from Discount Drug Mart," Bates-stamped	
19		P-DDM-0501	
20	DDM-Nameth 22	E-mail to Mr. Brinks from Mr. Ratycz, dated 10/23/2013,	356
21		Bates-stamped DDM00169025	
22	DDM-Nameth 23	E-mail from Mr. McGinley, dated 12/2/2013, with attached	359
23		Controlled Substances Model Policy, Bates-stamped	
24		DDM00031931 through 31965	

1	INDEX TO EXHIBITS (CONT'D)		
2	DDM-NAMETH	DESCRIPTION	PAGE
3	DDM-Nameth 24	E-mail string ending with an	363
4		e-mail to Mr. Devens from	
5		Ms. Strang, dated 4/2/2014,	
6		with attached Controlled	
7		Substances Model Policy,	
8		Bates-stamped DDM00092440	
9		through DDM00091629	
10	DDM-Nameth 25	Document titled "DLSS	365
11		Controlled Substance client	
12		Customers: Due Diligence	
13		Questionnaire," Bates-stamped	
14		DDM00382315 through 382320	
15	DDM-Nameth 26	E-mail string ending with an	369
16		e-mail to Ms. Strang from	
17		Ms. Kreiner, dated 1/20/2017,	
18		Bates-stamped DDM00074952 and	
19		74953	
20	DDM-Nameth 27	E-mail string ending with an	373
21		e-mail to Mr. Nameth from	
22		Mr. Wilkins, dated 9/18/2013,	
23		Bates-stamped DDM00055694	
24			
25	DDM-Nameth 28	E-mail to All Pharmacists from	378
26		Mr. Nameth, dated 9/24/13,	
27		with attachment, Bates-stamped	
28		DDM00110147	
29	DDM-Nameth 29	E-mail string to	382
30		Messrs. Ratycz and Nameth from	
31		Mr. Wilkins, dated 10/16/13,	
32		Bates-stamped DDM00168903 and	
33		168904	
34	DDM-Nameth 30	E-mail string ending with an	386
35		e-mail to Mr. Nameth and	
36		others from Mr. Simmons, dated	
37		10/21/2013, Bates-stamped	
38		DDM00169973 and 169974	
39			
40			

1	INDEX TO EXHIBITS (CONT'D)		
2	DDM-NAMETH	DESCRIPTION	PAGE
3	DDM-Nameth 31	E-mail string ending with an	390
		e-mail to Mr. Carter and	
4		Ms. Bartish from Mr. Nameth,	
		dated 6/13/2014, Bates-stamped	
5		DDM00087058 and 87059	
6	DDM-Nameth 32	Compilation of documents with	393
		various Bates numbers	
7			
	DDM-Nameth 33	Discount Drug Mart, Inc.	414
8		Organizational Chart	
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			

1

- - -

2

P R O C E E D I N G S

3

- - -

4

THE VIDEOGRAPHER: We are now on

5

the record. My name is Michael Newell.

6

I am a videographer for Golkow

7

Litigation Services. Today's date is

8

January 7, 2019. The time is 9:03 a.m.

9

This deposition is being held in

10

Cleveland, Ohio in the matter of

11

National Prescription Opiate Litigation.

12

The deponent today is Tom Nameth.

13

Will counsel please identify

14

themselves.

15

MR. MULLIGAN: Edward Mulligan and

16

Jonathan Knoll for the Plaintiffs.

17

MR. JOHNSON: Tim Johnson for the

18

Defendant, Discount Drug Mart.

19

MR. HOLLINGSWORTH: Adam

20

Hollingsworth for Walmart.

21

MR. DJORDJEVIC: Greg Djordjevic

22

for McKesson.

23

MS. ZERRUSEN: Sandy Zerrusen from

24

Jackson Kelly for AmerisourceBergen.

1 MS. OKUN: Jill Okun for Cardinal
2 Health.

3 MR. MULLIGAN: Anybody on the
4 phone?

5 MS. COLEMAN: Hi. This is Tera
6 Coleman at BakerHostetler on behalf of
7 the Endo Defendants.

8 THE VIDEOGRAPHER: The court
9 reporter today is Carol Kirk and will
10 now swear in the witness.

11 - - -

12 TOM NAMETH
13 being by me first duly sworn, as hereinafter
14 certified, deposes and says as follows:

15 CROSS-EXAMINATION

16 BY MR. MULLIGAN:

17 Q. Good morning, Mr. Nameth.

18 A. Good morning. How are you?

19 Q. My name is Ned Mulligan, and I'm
20 an attorney at Cohen & Malad in Indianapolis.
21 And we're here to take your deposition today.

22 Do you understand that?

23 A. Yes.

24 Q. Okay. And I appreciate your time

1 here today. I'm sure there's things you'd
2 rather be doing. We'll try to get you out of
3 here as soon as we can, okay?

4 A. That's fine.

5 Q. Before the deposition started, I
6 went over a couple just basic ground rules.

7 Did you understand those
8 generally?

9 A. Yes.

10 Q. Okay. And the only thing I didn't
11 mention -- well, there was two things. One, if
12 you want to take a break, I'm more than happy to
13 let you take a break. It's not a marathon. All
14 I ask is that we finish the document we're on or
15 that you answer the question that's pending.

16 Is that fair?

17 A. That's fair.

18 Q. Okay. And if I ask a question
19 today that you don't understand, which is likely
20 to happen, I'd just ask that you let me know
21 that you didn't understand, and I can try and
22 rephrase it.

23 Is that fair?

24 A. That's fair.

1 Q. Okay. And in the same vein, to
2 the extent that you do answer my question, is it
3 fair for me to assume that you understood it?

4 A. Yes.

5 Q. Okay. For the purposes of the
6 deposition, I may use some abbreviations today
7 that I want to just clear with you, if that's
8 all right. The first one would be suspicious
9 order monitoring I may refer to as SOM. Is that
10 an abbreviation you're familiar with?

11 A. Yes, it is.

12 Q. Okay. And same with suspicious
13 order reporting would be SOR?

14 A. Okay.

15 Q. Okay?

16 And then I may refer to Discount
17 Drug Mart as DDM.

18 A. That's fine, yes.

19 Q. Okay. And then the Controlled
20 Substances Act as the CSA.

21 A. Okay.

22 Q. Okay. And just a second ago, you
23 were -- you swore that you would tell the truth
24 today.

1 Did you understand that?

2 A. Sure did.

3 Q. Okay. And you know that that
4 means that you're here to tell the truth and the
5 whole truth, correct?

6 A. Yes, sir.

7 Q. Okay. And are you prepared and
8 ready to do that?

9 A. I hope so.

10 Q. Okay. Is there anything that
11 would keep you from telling the whole truth
12 today?

13 A. No.

14 Q. Okay. So my understanding is that
15 you're actually retired now; is that correct?

16 A. That's right.

17 Q. Okay. When did you retire?

18 A. 2014. And then I went -- after
19 that, I did stay on with the company as a
20 part -- on a part-time basis for approximately a
21 year, but reduced workloads.

22 Q. Okay. And having talked to some
23 of your former colleagues, my understanding is
24 that that's sort of a common thing at DDM, that

1 the outgoing manager sort of stays on part-time,
2 at least in some instances, to transition in the
3 new person.

4 Is that fair?

5 A. Yes.

6 Q. Okay. And who took over for you
7 in 2014 and then thereafter?

8 A. Jason Briscoe.

9 Q. Okay. And what was your title
10 in -- when you retired?

11 A. Director of pharmacy operations.

12 Q. So I assume sometime prior to
13 2014, you indicated you wanted to retire; is
14 that correct?

15 A. Yes.

16 Q. And then they would -- they
17 brought in Jason -- or they tabbed Jason to take
18 over for you?

19 A. Right. He was brought in prior to
20 that date. Maybe a year prior to that date or
21 so.

22 Q. Okay. And do you know what his
23 title was prior to that?

24 A. He was supervisor of the southern

1 region, I think.

2 Q. So he was like a regional
3 supervisor --

4 A. Right --

5 Q. -- of a sect of the DDM
6 pharmacies?

7 A. Yes.

8 Q. Okay. And I understand there was
9 a couple of those, right?

10 A. There were.

11 Q. Okay. And so DDM chose him to
12 replace you --

13 A. Correct.

14 Q. -- or did you choose him?

15 A. No. It was a corporate decision
16 to do that.

17 Q. Okay. And so would it be fair to
18 say that in 2014, he became the director of
19 pharmacy operations but then you stayed on in
20 a -- sort of a part-time capacity to help ensure
21 that he got up to speed?

22 A. I think that was done prior. I
23 mean, he was there a year prior to that, so he
24 was pretty much up to speed by the time I

1 retired, and when I did retire, I went to just a
2 couple of days a week in a reduced capacity.
3 But, you know, that's ...

4 Q. Okay. Did you work closely with
5 him prior to your retirement?

6 A. Yes.

7 Q. And was -- were you his -- strike
8 that.

9 Did he directly report to you?

10 A. Not necessarily. I mean, he
11 probably worked with me alongside of me in a lot
12 of things, but he reported to -- to Pete Ratycz.

13 Q. Okay. And you also reported to
14 Pete Ratycz?

15 A. Yes.

16 Q. How long did you work at DDM?

17 A. Approximately 30 years.

18 Q. So if my math is correct, does
19 that mean that you started in -- would it have
20 been like --

21 A. About '85 or somewhere in there.

22 Q. What was your position when you
23 started there?

24 A. Staff pharmacist, retail.

1 Q. So that would have been a
2 pharmacist at one of the stores?

3 A. Yes.

4 Q. And my understanding -- well,
5 strike that.

6 At that time were there chief
7 pharmacists at the stores as well?

8 A. There were chief and staff.

9 Q. And so correct me if I'm wrong,
10 you are a pharmacist then?

11 A. Yes.

12 Q. Okay. Do you have a PharmD?

13 A. I do not.

14 Q. Okay. And what's the degree that
15 you have?

16 A. BS.

17 Q. I'm sorry?

18 A. BS, Bachelor of Science, pharmacy.

19 Q. Okay.

20 MR. JOHNSON: You're jumping on
21 the end of his questions a little bit
22 so --

23 THE WITNESS: Okay.

24 MR. JOHNSON: -- just slow it down

1 a notch or so.

2 MR. MULLIGAN: He was pretty good
3 until that last one.

4 MR. JOHNSON: Yeah.

5 BY MR. MULLIGAN:

6 Q. You're doing good.

7 A. Okay.

8 Q. And where did you get your
9 bachelor in pharmacy?

10 A. Duquesne University, Pittsburgh.

11 Q. And what year was that?

12 A. 1972.

13 Q. And did you start working as a
14 pharmacist in 1972?

15 A. I was in the service from '72 to
16 '74. And after that -- which I worked as a
17 pharmacist in the service --

18 Q. Okay.

19 A. -- at Madigan Hospital in Fort
20 Lewis, Washington. Came out and then went into
21 retail here.

22 Q. So did you work as a retail
23 pharmacist somewhere else before joining DDM?

24 A. Yes. Revco for -- which is now

1 CVS, for a number of years.

2 Q. Was there any other pharmacies
3 that you worked at from -- between your time in
4 the service and when you started at DDM in --

5 A. Yes. After Revco, I worked for
6 Kroger's. Kroger's was leaving the Cleveland
7 area, so I had to switch at that point, and
8 which -- I don't know. It was late '70s, I
9 guess -- to Rite Aid.

10 Q. Okay.

11 A. And then from Rite Aid to Drug
12 Mart --

13 Q. Okay.

14 A. -- or DDM.

15 Q. And you were in a retail
16 pharmacist role in each of those locations,
17 correct?

18 A. For all of those, yes.

19 Q. And when did you -- when were you
20 promoted from staff pharmacist at DDM to a
21 higher position?

22 A. Maybe in the late '90s I went
23 to -- I was the director of IPS, which was a
24 mail order nursing home and physicians'

1 dispensing operation.

2 Q. So from, let's say, '84, '85
3 time --

4 A. Maybe to '90 -- it was probably
5 '90 -- maybe it was even early '90s.

6 Q. Okay. So from the '84 to '85 time
7 frame until when you went to that role, you were
8 a staff pharmacist at the DDM stores?

9 A. Yes.

10 Q. Okay. And then how did you go
11 from the director of IPS to being the director
12 of pharmacy operations? Were there any other
13 intermediate steps?

14 A. I -- from the -- from the IPS, I
15 went to the Medina store as chief pharmacist,
16 and then from the Medina retail store, I went to
17 the corporate office as director. And that was
18 probably, I'm going to say, '96, '97.

19 Q. And then you were in that role
20 until 2014, correct?

21 A. There was one year interim where I
22 was -- took over our VP -- our current VP at
23 that time, rather, had left and for about a
24 year, I was acting VP until Pete took over in, I

1 believe, '02.

2 Q. Okay. So it would be fair to say
3 you've got a pretty in-depth understanding as to
4 how DDM's business works?

5 A. I would think so.

6 Q. And specifically as it relates to
7 its pharmacy?

8 A. Yes.

9 Q. And you're also very well versed
10 in sort of the pharmaceutical business, retail
11 business, if you will?

12 A. Yes.

13 Q. Okay. So as the director of
14 pharmacy operations, what were your primary
15 responsibilities?

16 A. Well, anything that went on, you
17 know, in the pharmacies themselves, hiring,
18 firing, you know, staffing, making sure the
19 stores are run properly, looking at stores', you
20 know, profitabilities and inventories.

21 Q. Is there anything else that you
22 were responsible for as director of pharmacy
23 operations that you can think of?

24 A. I mean, you know, not offhand.

1 Q. Okay. You know why we're here
2 today, right?

3 A. Yes.

4 Q. And why is that?

5 A. Looking at the opioid problems,
6 situations, in the country.

7 Q. Okay. And could you be a little
8 more specific?

9 A. Looking at possible drug
10 diversion, what that is, and how do you go about
11 fighting that problem, I guess.

12 Q. Were you responsible for
13 overseeing DDM's system to detect and deter
14 diversion?

15 A. I wouldn't say responsible. As
16 far as what -- as far as writing it or as far as
17 operations or what?

18 Q. Go ahead and tell me what you were
19 responsible for.

20 A. More of the operational aspect of
21 it.

22 Q. Okay. How do you define
23 "operational"? I want to just make sure I
24 understand sort of the scope of what your

1 responsibilities were related to diversion.

2 A. Okay. Once a policy was
3 determined on how we're going to go about
4 organizing and making sure that there was no
5 diversion, whether that be theft or whether it
6 be -- whether it be just routine distribution,
7 my job was to make sure that the process was
8 done on a regular basis and making -- and react
9 to situations when they did come up.

10 Q. Okay. When was a -- well, you
11 said when a policy was determined, what do you
12 mean by that?

13 A. Well, we're a small company, so we
14 determined what we wanted to do on a regular
15 basis, on an ongoing basis, whether or not --
16 there was -- at that time there was a report
17 that was run on a monthly basis, and someone had
18 to review the report on a regular basis, and
19 take appropriate steps when necessary. So, you
20 know, we knew our duties at that time and
21 fulfilled those duties.

22 Q. All right. So I'll just -- we're
23 talking -- you're talking in very general terms,
24 and so what that means is I'm going to have to

1 ask you a lot of follow-up questions, so -- and
2 that's fine. But I'm going to try to dig into
3 that a little bit more --

4 A. Okay.

5 Q. -- so we don't -- we can get
6 through it quicker.

7 Okay. So you said you're a small
8 company. Can you tell me what the relevance of
9 that is to what your ultimate policy became?

10 A. Well, you know, our company is
11 small to the point where we have very little
12 turnover. So somebody that is in my position,
13 there's only two people really in the corporate
14 office that was looking at the reporting
15 systems.

16 So, you know, we didn't
17 necessarily have a written policy, per se, but
18 we knew what the policies were, what our jobs
19 were, what our functions were. So it was really
20 up to us to maintain that functionality on a
21 monthly basis to make sure that, you know, the
22 reports were looked at and followed up on,
23 so ...

24 Q. Who was the other person?

1 A. The VP of pharmacy and myself, the
2 director.

3 Q. Okay. So at some point -- and
4 tell me -- correct me if I'm wrong. Were you --
5 did you participate in designing DDM's
6 suspicious order monitoring policies and
7 procedures?

8 A. No.

9 Q. You did not? Do you know who did?

10 A. Well, there's a couple of
11 different layers that were involved in that.
12 Back in, oh, mid '90s there was a policy that
13 was -- not a policy, but a program that was
14 written to monitor controlled drug orders and
15 that was probably done in the mid '90s.

16 Q. And is that the policies and
17 procedures that are in place today that you know
18 of, or at least as of when you retired?

19 A. A portion of it, yes.

20 Q. Okay. And did you play any role
21 in drafting that?

22 A. I did not.

23 Q. Okay. What did that policy
24 consist of at that time?

1 A. It was a monthly report that was
2 run out on controlled drugs. It was a
3 controlled drug report looking at the average
4 number of bottles of controlled drugs that were
5 distributed or actually ordered by a particular
6 store based on a monthly average, but I think it
7 was -- might have been designed as a rolling
8 12-month --

9 Q. Okay.

10 A. -- average looking backwards.

11 Q. And I'll just represent to you,
12 based on the depositions I've been at, that
13 that's the report that they still use today as
14 part of their suspicious order monitoring
15 policies.

16 Are you aware of that?

17 A. Okay. I believe that they still
18 use it, but I've been gone for -- since '14.

19 Q. Sure.

20 A. I was really out of that loop, I
21 mean, from '14, but ...

22 Q. Was it used in 2014?

23 A. Yes.

24 Q. And it was used from when it was

1 put in place through 2014?

2 A. Yes.

3 Q. Without any exception?

4 A. That portion was used straight
5 through. There were some additions that were
6 added to that.

7 Q. Okay. Was that report designed to
8 identify suspicious orders?

9 A. Part of it. That was part of the
10 functionality. I mean, you know, suspicious
11 orders were -- you know, it was kind of a
12 different layer -- multilayered type of program
13 where we -- that was one part of the program,
14 yes.

15 Q. Okay. So it sounds to me like it
16 was maybe designed for multiple reasons and one
17 of them might have been suspicious orders; is
18 that fair?

19 A. That particular rolling average
20 monthly report was designed specifically to look
21 at controlled drugs anomalies that would -- you
22 know, quantities higher than the normal, and
23 that was really the specific use of it.

24 Q. Okay. In your eyes, would an

1 anomaly associated with a controlled substance,
2 in terms of size, would that be something that
3 would constitute a suspicious order?

4 A. Not necessarily. It would be
5 something that would jump out of the page at you
6 and then you'd have to look into that specific
7 reason why that -- there was an increase from
8 month to month or that particular month.

9 So it, not necessarily, would make
10 it a suspicious order. It would jump out of the
11 page. Then there would be follow up to
12 determine whether it was suspicious or not.

13 Q. Okay. So if you were looking at
14 this one month -- the monthly -- what do you
15 want to call this report for the sake of the
16 transcript? Do you have a preference as to what
17 you call it?

18 A. Twelve-month order. I mean,
19 12-month --

20 Q. The 12-month report?

21 A. Yeah, I guess.

22 Q. Okay. And when we say that, we'll
23 agree that we're referring to the one that's
24 printed monthly and reflects a rolling 12-month

1 average.

2 Is that fair?

3 A. Right. Yes.

4 Q. Okay. So if you were looking --
5 and I assume part of your responsibilities were
6 to review this 12-month report, correct?

7 A. Yes.

8 Q. Was anybody else responsible for
9 reviewing this 12-month report on a monthly
10 basis?

11 A. If I was on vacation, the VP of
12 pharmacy would do that --

13 Q. Okay.

14 A. -- but it would only be between
15 the two of us.

16 Q. Okay. And you said that you would
17 use that report to see if anything jumped out at
18 you, right?

19 A. I would use the report to make the
20 next determination of whether we had to do
21 something else besides necessarily what had to
22 be -- there was another form that we used that
23 we sent out to a store to ask them the reasons
24 why of the increase.

1 Q. Okay. So let's say Store Number 1
2 has a 12-month rolling average of five bottles
3 of hydrocodone per month, fair?

4 A. Yes.

5 Q. Okay. And then you get a report
6 on January 1st showing that in December they
7 ordered 15 bottles of hydrocodone.

8 A. Yes. Okay.

9 Q. And so would that appear on the
10 report?

11 A. Yes.

12 Q. Okay. And would that jump out at
13 you?

14 A. Yes.

15 Q. Was there any policy and procedure
16 at DDM that told you what should jump out at
17 you?

18 A. It was discussed that if we
19 determined that it was a policy -- not a policy.
20 We determined that the volume was higher than
21 normal, then we would follow up with a report to
22 the store.

23 Q. Okay. And so it sounds like there
24 wasn't --

1 A. In other words, if they're going
2 up from two bottles to four bottles, that, not
3 necessarily, would -- it's a higher volume than
4 normal. And that's why we had to look at that
5 as an individual, because we had to determine
6 what store we're looking at.

7 If you're looking at just a
8 number, a black and white number, it really
9 doesn't tell you much. It tells you a volume,
10 but it doesn't tell you anything besides that.
11 So that's why we had to look at it and then
12 determine a reason why, and that reason then
13 would go out to the stores. We'd ask the
14 question and then they would have to respond.

15 Q. Okay. And I appreciate all that.
16 What I'm really focused on right now is, did you
17 ever receive any training or was there any
18 policies and procedures that said, "All right,
19 Tom, if you see this report and this store that
20 was ordering five has ordered, you know -- if it
21 increases by X percentage, then you have to do
22 something."

23 Was there anything like that?

24 A. Well, as being a retail pharmacist

1 for 15 years probably before, you know, I was
2 very well aware of what stores -- the
3 functionalities of stores do, how their orders
4 were done, and they gave you a background.

5 Now, we also -- when I came on
6 board, it was verbally dictated to me that this
7 is what we should do if you have -- if you feel
8 that this is higher than normal, then we should
9 follow up. So that's what we did.

10 Q. Okay. So what I'm hearing is --
11 tell me if I'm wrong -- there was no set policy
12 and procedure that required you to follow up
13 based on a particularly -- like a percentage
14 increase? There was no percentage that says,
15 all right, in this instance, you have to follow
16 up with the pharmacist, correct? It was a
17 judgment call that you got to make?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. And so on any given month, let's
22 take that store we just talked about that had an
23 average of five bottles, correct? Okay?

24 A. Yes.

1 Q. Is there a specific number where
2 for Tom, an increase that would jump out at you
3 where you'd say, "I need to follow up"?

4 A. Well, the report itself, I think,
5 would populate once that -- that number would,
6 say, hit a threshold. I think the threshold of
7 that report, if I don't -- if I remember
8 correctly, was about 90 -- 90 percent,
9 99 percent or so. So when it would populate in
10 the report, in your case, that would have to be,
11 what, ten bottles?

12 Q. Mm-hmm.

13 A. And so in my opinion, that would
14 be a substantial increase. So we would have to
15 understand why it went from five to ten. So
16 that would -- that would then generate a report
17 on my side out to the stores to ask them that
18 question.

19 Now, there's some other things
20 involved. If a store was -- you know, had a
21 clinic that opened up next store, Cleveland
22 Clinic was populating, you know, individual
23 satellites around the suburbs of Cleveland quite
24 rapidly, and so there are things that we knew --

1 that's why it's important for us to have
2 somebody look at it rather than just take it by
3 its value on a piece of paper.

4 Q. Okay. So my question was
5 specific. Was there a certain number that would
6 cause you to do follow up? And I appreciate all
7 the other things you told me. We'll be here
8 until Friday if --

9 A. Okay.

10 Q. I appreciate the information.

11 A. I'm just trying to explain what we
12 do, but you know.

13 Q. Yeah. And I don't want anybody --

14 A. I understand.

15 Q. -- to be mad at me later --

16 A. No. I understand.

17 Q. -- when it's 7:00 and we're still
18 here. But -- you know, so I -- if you can
19 listen to my question. I'm going to try and ask
20 very specific pointed questions for what I need,
21 and if you can try and answer the question.
22 Certainly you're welcome to provide any
23 additional information you want, but I don't
24 want to keep you here all day.

1 So let me ask this. Okay. So
2 this report's printed monthly, right?

3 A. Correct.

4 Q. Okay. Does it have all DDM's
5 stores on it?

6 A. Yes, it does.

7 Q. And it's broken up by store?

8 A. Yes.

9 Q. Okay. Does it include just
10 controlled substances or other items?

11 A. Yes.

12 Q. Just controlled substances. Okay.
13 Do all controlled substance orders
14 appear on this report or just the ones that
15 exceed the 99 percent?

16 A. They can all appear on there.
17 Now, they -- I think that once they're printed,
18 only the 99 percent were. I don't -- I think
19 it's only the 99 percent.

20 Q. Okay. So let's say -- let's use
21 our example again, and I don't remember what
22 store it was. We'll say Store 1 so we can
23 remember. So Store 1 has an average of five
24 bottles a month, right?

1 A. Yes.

2 Q. This feels like math class,
3 doesn't it?

4 A. Yeah.

5 Q. Okay. So they're averaging five a
6 month and then all of a sudden in December they
7 order nine, right?

8 A. Yes.

9 Q. Okay. That wouldn't show up on
10 the report, would it?

11 A. Probably not.

12 Q. Okay. So then we're at nine, and
13 then let's say the next month they order 16.
14 That wouldn't show up on the report either,
15 would it?

16 A. Well, I'd have to look and see.
17 It's a rolling average, so ...

18 Q. Okay. So the December amount --

19 MR. JOHNSON: Let him finish.

20 Q. Yeah. Go ahead.

21 A. I don't know. I'd have to look
22 at -- and we'll do the math, I guess, and see if
23 a rolling average from month to month when
24 you're going back 12 months, I would have to

1 understand the math.

2 Q. I gotcha. But you'd agree that
3 each month they could increase 98 percent over
4 what their last 12-month average was and it
5 wouldn't show up on the report; is that correct?

6 A. Well, it's an increment -- when
7 you're looking at it on a month to month on a
8 rolling 12, I don't -- when you average in the
9 whole year, I don't think it -- I'm not quite
10 sure. I'd have to look at the math, you know,
11 and if it pops on that report.

12 Q. Okay. So my question was, I'm
13 trying to frame my question in a way that --

14 A. Well, I -- yeah. You're trying --

15 Q. Let me ask --

16 MR. JOHNSON: Let him ask you --
17 let him --

18 Q. So my question is: If you
19 could -- that a store could increase its orders
20 every month, right?

21 A. Mm-hmm.

22 Q. Under that formula just generally
23 over time and without having any of those
24 ordering patterns show up on that report,

1 correct?

2 A. If you're only looking at a month
3 to month, you're correct in your statement that
4 you wouldn't see that. But when you throw in
5 the rolling average of 12, I don't know if that
6 skews that number.

7 Q. Well, let's say in month 12 you
8 increase your orders by 98 percent, all of a
9 sudden your 12-month average went up, didn't it?

10 A. Yes.

11 Q. And so then you could then
12 increase again by 98 percent, which would then
13 again bring your --

14 A. I don't think on a monthly -- each
15 month that would -- you could do a 90 -- or
16 100 percent, whatever it is, 99 percent every
17 single month and increase that because it's a
18 rolling 12. It looks back -- you know, it's
19 slow -- it's a slow progression.

20 Q. Right. So the January before
21 rolls off when the --

22 A. Okay. Yes. Yes.

23 Q. -- most recent January goes on.

24 A. Mm-hmm.

1 (Reporter clarification.)

2 A. I'm sorry.

3 Q. The -- yeah. We talked over

4 there, each other.

5 So your January from last year
6 rolls off the report when your January from this
7 year gets added?

8 A. Yes.

9 Q. Okay. And so if your January from
10 last year was five bottles and your January this
11 year was ten, your average goes up, right?

12 A. Yes.

13 Q. Which then raises the amount that
14 you could order in February without that amount
15 showing up on your report, correct?

16 A. I'm taking your word for it.

17 Q. Okay. I mean --

18 A. Without doing the math, but yes.

19 Q. Right. Well, and I haven't given
20 you any specific math. And it's your report.

21 So I'm just trying to understand how this would
22 work and how things would show up.

23 A. Yeah.

24 Q. Okay. How often would stores show

1 up on this report?

2 A. They would show up on the report
3 with some frequency. It depends on if it's
4 cough and cold and flu season, then you're going
5 to see more cough syrups report -- on the
6 report. But how often a particular store?

7 Q. I guess what I want to know is,
8 Tom goes into work on January 1 -- I'm sorry for
9 calling you Tom. Mr. Nameth.

10 A. That's fine.

11 Q. Mr. Nameth goes into work on
12 January 1. The report prints out. It lands on
13 your desk. Are all 74 stores on that report --

14 A. Yeah.

15 Q. -- showing stuff that's exceeded
16 the 99 percent rolling average?

17 A. All stores are on the report but
18 there could be blank pages that they don't show
19 anything.

20 Q. Okay. So if no stores' order
21 history trigger this reporting system that had
22 been set up, they would just have the store but
23 nothing underneath?

24 A. Right.

1 Q. And how common was it for the
2 store to be listed with nothing underneath it?

3 A. I would say it was not that common
4 for having a store having nothing. So we had to
5 review each -- you know, it was fairly time
6 consuming to do, but ...

7 Q. Let's talk about opioids.

8 A. Yeah.

9 Q. When would this report print?
10 Would it be the first of the month?

11 A. Yes.

12 Q. Okay. And would that be the thing
13 you'd expect to spend that day doing, looking at
14 that report?

15 A. Generally, yeah. I mean, it was
16 something that took some time.

17 Q. Okay. How many days would you
18 spend on it?

19 A. It depends on how much time I had.
20 It could be several hours to, you know, a day
21 maybe, looking at it.

22 Q. Okay. Would it ever take you more
23 than a day to go through that report and do
24 whatever due diligence you needed to do?

1 A. Not that I recall.

2 Q. Okay. And how many stores would
3 you say on average would show up on that report
4 regarding opioid purchases?

5 A. Strictly opioids?

6 Q. Correct.

7 A. There might be a dozen stores.

8 Q. Okay. So 12 of the 74 stores
9 would appear on average, just generally on a
10 given month showing that their orders for the
11 last month for opioids were greater than
12 99 percent of their 12-month rolling average; is
13 that fair?

14 A. Yeah. Now, that number -- when we
15 got towards 2012, '13, '14, those numbers seems
16 to -- seemed to decrease.

17 Q. Do you know why that was?

18 A. I do not know.

19 Q. Did you ever look into why the
20 amount of times a store appeared on that report
21 went down around that time frame?

22 A. No.

23 Q. Okay. So you noticed a marked
24 decline in stores showing up on your suspicious

1 order monitoring report and you didn't do
2 anything to figure out why?

3 A. If they decreased?

4 Q. Correct.

5 A. No, I did not.

6 Q. Okay. Do you have any idea today
7 why fewer stores were showing up on your
8 suspicious order monitoring report starting in
9 2012?

10 A. No.

11 Q. Are you aware that that time frame
12 more or less coincides with when this opioid
13 crisis really kind of got blown out of
14 proportion? Excuse me. Blew up is the word I
15 was looking for.

16 A. I think that it was more in the
17 news and there were some policies that the State
18 Board of Pharmacy made -- and, you know, I'm --
19 again, I'm not quite sure of the year, but there
20 was some changes to the board of how many
21 opioids you could dispense at a particular time,
22 so ...

23 Q. Do you know what those rules are?

24 A. Quantities, you know -- actually,

1 the big thing was when hydrocodone went to
2 Schedule II, but now you're talking, what, I
3 think in '14. So prior to that, not really. I
4 don't know why that would have been.

5 Q. So you told me that you thought
6 about a dozen stores would show up regarding
7 opioids on a monthly basis on that report. Was
8 that prior to 2012 or was that --

9 A. Yeah. I think that -- that was
10 probably around '12, '13. Prior to that, it
11 might have been slightly more on -- strictly on
12 the opioids.

13 Q. Okay. And you would spend upwards
14 of a day looking into that and doing due
15 diligence to determine whether that ordering
16 pattern was suspicious?

17 A. I don't know if I would say
18 upwards of a day.

19 Q. Okay. So --

20 A. A portion of the day.

21 Q. Okay. And what would that -- what
22 would the time that you spent -- what would you
23 spend that time doing?

24 A. Reviewing each particular order

1 that would show on the report, looking at what
2 store it was, determining to the best of my
3 knowledge why that would be, and then sending
4 out reports to the store. You know, generating
5 another report to the store to ask them, you
6 know, why they had an increase.

7 Q. Okay. Did you always send the
8 form to the store?

9 A. I'm sending the forms and it would
10 always go to the store, yes.

11 Q. Okay. So any time that a store
12 showed up on that report, you would send a form
13 asking them to explain why their ordering had
14 increased?

15 A. No.

16 Q. Okay.

17 A. I mean, that's when I used a
18 judgment.

19 Q. So this report would populate
20 automatically, correct?

21 A. Yes.

22 Q. And you would get the report,
23 correct?

24 A. Right.

1 Q. And you were primarily responsible
2 for reviewing it, correct?

3 A. Yes.

4 Q. And you'd spend a couple hours on
5 the day that it populated reviewing it, right?

6 A. Right.

7 Q. And depending upon what popped out
8 at you, you would then decide whether to send a
9 form to the store asking for more information
10 about why --

11 A. Well, you know, if the volume --

12 Q. Hold on. You would then send a
13 form that would ask them to explain why their
14 orders increased, correct?

15 A. Yes, but I would send a form -- if
16 the quantities went from one to two or three, I
17 generally would not send a report. If the
18 quantities went from five to ten, that would
19 generate a report, so ...

20 Q. Why would five to ten generate a
21 report to the store and not one to three?

22 A. Well, when you're looking at ups
23 and downs in the marketplace and all the
24 variables, you know, when you're talking about

1 increase by one bottle, so to speak, that
2 necessarily would not, in my mind, generate a
3 report that would lead to a possible suspicious
4 order.

5 Q. Okay. That was a judgment call
6 you made, right?

7 A. Yes.

8 Q. And what was the purpose of the
9 report that you would send to the stores?

10 A. Well, it was twofold, in my
11 opinion anyway. One was to see why the
12 increase. The second was to see, after they do
13 the math of -- say, like they had an increase in
14 the number of volume of scripts, I also wanted
15 to know whether or not the remaining bottles
16 were on the shelf, or if there was some
17 diversion where someone was -- you know, are we
18 missing bottles? Because if they had ordered
19 ten bottles and five were used for filling
20 scripts, they better have five on the shelf, so
21 to speak.

22 Q. Did you ever send out one of those
23 forms and get a response back that, you know,
24 we're missing two bottles and so we had to

1 replace them?

2 A. Not that I recall.

3 Q. Okay. Do you ever recall any
4 issues regarding missing controlled substances?

5 A. At store level?

6 Q. Correct.

7 A. There have been situations at
8 store level where there have been missing
9 controlled substances.

10 Q. Is that a common occurrence?

11 A. Not really.

12 Q. Okay. So it was uncommon?

13 A. I would say.

14 Q. Do you think DDM did a good job of
15 preventing diversion at its store level?

16 A. I think we did.

17 Q. Okay. All right. So let's just
18 recap this because I want to make sure I fully
19 understand. So at some point in the '90s, DDM
20 designed this report that would generate
21 monthly, right?

22 A. Yes.

23 Q. Okay. And the monthly report had
24 every store on it, right?

1 A. Yes.

2 Q. And it would show the rolling
3 12-month average for -- well, it would reflect
4 the rolling -- strike that.

5 The formula used to decide whether
6 an ordering history would show up for a given
7 store was whether it exceeded the prior 12-month
8 rolling average by 99 percent, right?

9 A. Yes.

10 Q. Otherwise nothing would show up,
11 right?

12 A. Right.

13 Q. Okay. And so this report, did it
14 get e-mailed to you? Was it printed?

15 A. Printed.

16 Q. Okay. So this report comes out
17 and you go and you grab it and then you look at
18 it, right?

19 A. Correct.

20 Q. And you spend a couple hours and
21 you look at all the orders or the ordering
22 history that shows up. And you'd agree that
23 we're talking about ordering history, right, not
24 necessarily a specific order?

1 A. Say again.

2 Q. So, like, for example, the store
3 orders -- the stores made orders more than once
4 a month, right?

5 A. Yes.

6 Q. Okay. And so the report would
7 reflect what was ordered the prior month, but it
8 wasn't a -- it wasn't showing specific orders,
9 it was showing the total orders?

10 A. Yes.

11 Q. Okay. And so you would then look
12 at that and you would make a judgment call as to
13 whether you needed to follow up with the store
14 to get more information, correct?

15 A. Yes.

16 Q. Okay. And if you decided that a
17 particular change was large enough, based on
18 your own judgment, then you would send a form to
19 the store asking for more information, correct?

20 A. Correct.

21 Q. Okay. And what -- let's say we
22 had that store where they averaged five and now
23 they've ordered ten the last month, what would
24 be a satisfactory explanation for why they

1 increased their order?

2 A. If the number of scripts went up,
3 if the number of -- the volume of controlled
4 substances that were dispensed went up, then
5 that would equate to a reason why their volume
6 went up. But then, again, on the same token,
7 there was lots of times when I would follow up
8 if I wasn't -- if that wasn't a complete answer,
9 I would make sure that the bottles were still on
10 the shelf.

11 Now, so there were several times
12 where the pharmacist would increase their order
13 because they were running a little bit low
14 previously. These are controlled drugs for
15 pain. We don't want to run out of a pain
16 medication that someone needs immediately. You
17 can't tell them, they're going to come in two
18 days later for their pain medicine.

19 So we would -- there were a lot of
20 times when the pharmacist would -- might order
21 heavier, you know, than normal, just so they
22 wouldn't run out, if they were getting low.

23 Q. And was that okay by you?

24 A. Yes, as long as I knew where they

1 were.

2 Q. Okay. So if a pharmacy averaged
3 five and then they ordered ten, they'd show up
4 on the report, right?

5 A. Yes.

6 Q. And then you would decide whether
7 or not that warranted any follow up, right?

8 A. Yes.

9 Q. Okay. And if the pharmacist
10 filled out this form and said, "Look,
11 Mr. Nameth, you know, we had more prescriptions
12 this month we had to fill and that's why we had
13 to order twice as much," that would be a
14 sufficient explanation?

15 A. As long as the volume would equate
16 to that, yes.

17 Q. Okay. And what would they need to
18 do to show you that the volume equated to the
19 increase in ordering?

20 A. They would either -- they would
21 either send a report of the actual scripts. If
22 they didn't send a report of the actual scripts,
23 if they determined that they had an increase in
24 volume or whatever of particular scripts, they

1 would have an explanation of why, and that could
2 have been followed up -- well, you know, a lot
3 of times it was, was how many bottles are left
4 on your shelf. Because the last thing we wanted
5 is to have somebody, you know, have some
6 diversion going on at store level.

7 Q. Okay. And so would it be fair to
8 say that the purpose of that report and your due
9 diligence was to make sure they weren't
10 replacing opioids, for example, with some that
11 had been diverted at the store level like
12 through theft; would that be fair?

13 A. What do you mean by "replacing"?
14 I didn't understand that.

15 Q. So it sounds -- you indicated to
16 me that an appropriate explanation for an
17 increase in orders that would show up on that
18 report would be that there were more
19 prescriptions, right?

20 A. Yes.

21 Q. And then you said to me that you
22 were concerned with making sure that they
23 weren't replacing bottles that may be -- were
24 diverted through theft or some other means at

1 the store level, correct?

2 A. I'm getting hung up on

3 "replacing." You know, what --

4 Q. Well, tell me what you mean. I'm

5 just trying to understand what you're telling

6 me. That's all.

7 A. Okay. I wanted to make sure that

8 the bottles were not diverted out of the store

9 through theft, that they have them on the shelf.

10 Q. Okay.

11 A. So --

12 Q. And so you wanted to make sure

13 that the increased order wasn't sort of --

14 wasn't a way of compensating for a bottle that

15 disappeared; is that fair?

16 A. Yes.

17 Q. Okay. What other ways that you

18 understand that a -- let's say a bottle of

19 opioids could be diverted out of a DDM store?

20 A. What other ways?

21 Q. Correct.

22 A. Well, possible theft, but other

23 possible ways? Maybe through a delivery. Maybe

24 there was a driver that decided to, you know,

1 take some controlled drugs. But other than
2 that, because it's a -- we're kind of a --
3 sending to our own people from our warehouse, it
4 would go from warehouse to store.

5 There's other -- those would be
6 probably the only two aspects that I could think
7 of, is either theft or diversion before it got
8 to the store.

9 Q. Okay. That would all be theft,
10 right?

11 A. Oh, yeah. One way --

12 Q. So theft by the driver delivering
13 the drugs?

14 A. Yes.

15 Q. And theft by a store employee?

16 A. Yes.

17 Q. Theft by anybody else? Is that
18 uncommon?

19 A. You're talking about at store
20 level?

21 Q. Correct.

22 A. Robbery.

23 Q. Okay. Did that ever happen?

24 A. Yes.

1 Q. Okay. How many times?

2 A. In what period?

3 Q. You tell me. I mean, any --

4 whatever -- while you were there, how many times
5 were -- was a DDM store robbed and prescription
6 drugs were taken?

7 A. It could have been a dozen times.

8 Q. Okay.

9 A. I don't know if it was an
10 extremely common occurrence.

11 Q. Can you identify for me -- we've
12 been obviously talking about this process where
13 you were looking at this report and you were
14 doing due diligence on the stores you determined
15 you needed to do it on, right?

16 A. Yes.

17 Q. Can you identify for me what you
18 did as part of that process to determine whether
19 those, let's say, opioids were -- or those
20 opioid orders were suspicious?

21 A. I don't think we ever had a
22 suspicious order.

23 Q. Okay. And that's an answer to a
24 different question which --

1 A. Okay.

2 Q. -- I appreciate and I already know
3 the answer to.

4 My question is: What did you do
5 when you got that report to identify whether
6 those drugs were all being used for a legitimate
7 purpose?

8 A. That's when I would fill out the
9 other -- the second half of that report. Once I
10 got the green bar, the printed report, reviewed
11 the report, sent my -- a follow-up report to the
12 stores asking why the increase was, they would
13 send back the response on why they had to order
14 so much. If the quantities on the shelf were --
15 and we did also monthly counts at that time.
16 And if those were all fine, that would be, you
17 know, the result of what we would do.

18 Q. Okay. And so your role in
19 reviewing that report and communicating with the
20 stores did not include ensuring whether the
21 prescriptions were appropriate or whether the
22 drugs that were being -- the increase on the
23 drugs going out were all being used for
24 legitimate purposes; is that fair?

1 A. Well, that's what happens at store
2 level. That's what the pharmacists are doing.
3 That's -- their job is to make sure that they're
4 filling legitimate prescriptions.

5 Q. Okay. So would it be fair to say
6 that DDM deferred to the pharmacist at the store
7 level to identify potential diversion through
8 prescriptions?

9 A. Yes. I mean, we -- we would give
10 them some guidelines to -- whether it was e-mail
11 or not -- about watching out for out of state
12 type of prescriptions. But the State Board of
13 Pharmacy were setting guidelines for the
14 pharmacists to follow at that particular point,
15 you know, especially with corresponding
16 responsibility. Once that became effective,
17 pharmacists were very well aware of whether --
18 to the best of their knowledge, whether they
19 were legitimate prescriptions or not.

20 Q. And you used the phrase there
21 "corresponding responsibility," right?

22 A. Correct.

23 Q. What does that mean?

24 A. Well, in other words, you can't

1 turn a blind eye just because you have a
2 prescription for a medication. You cannot just
3 fill it carte blanche.

4 Q. Okay.

5 A. The first thing you want to do is
6 make sure that the prescription itself is not
7 from out of state. You know, that raises a
8 question right there. So you don't want to fill
9 a prescription that's from out of state. We
10 wouldn't honor really out of state
11 prescriptions.

12 So we knew what was happening in
13 the State of Florida, and people from Ohio were
14 traveling to Florida to get prescriptions. When
15 they came back to our stores, we would turn them
16 down.

17 Q. So you knew this was a big
18 problem, right?

19 A. Yes.

20 Q. Okay. And would you agree the
21 phrase "corresponding responsibility" actually
22 means that DDM had a responsibility, as well as
23 its pharmacists, to ensure that the drugs that
24 it -- within its system were not being diverted?

1 A. I think that the State Board wrote
2 that regulation for retail pharmacies at the
3 store levels.

4 Q. And what do you mean by that?

5 A. I mean by -- a corresponding
6 responsibility was something that the
7 pharmacies -- pharmacists did at store level.

8 Q. Okay. And so would it be fair to
9 say that as director of pharmacy operations who
10 was primarily responsible for reviewing this
11 report and identifying unusual ordering
12 patterns, that you deferred entirely to the
13 pharmacists to determine whether those pills
14 were being diverted as part of prescriptions or
15 that kind of a venue -- or avenue rather?

16 A. We relied on our people -- so
17 we're a small enough company that we knew -- we
18 had meetings a lot, as far as what they should
19 be looking for, you know, what the pharmacists
20 at their -- if the pharmacists are doing their
21 job at store level, that should equate to what
22 we're doing at the retail -- at the wholesale
23 level to ship them their medication.

24 So, you know, if you're doing it

1 down at the end point, the distribution point
2 then relies on the end point, yes.

3 Q. Okay. And so if an order
4 appeared -- or a monthly ordering history was
5 larger and you called the pharmacist and they
6 gave you -- they said, "This is A-okay and above
7 board," you would trust them, right?

8 A. Yes, I would.

9 Q. Okay. And you would trust them
10 completely, right?

11 A. Yes, I would.

12 Q. Because you knew your people,
13 right?

14 A. Yes.

15 Q. And that was an important piece of
16 your suspicious order monitoring policy and
17 procedure, is trusting your pharmacists, right?

18 A. I would say I trusted them
19 implicitly, yes.

20 Q. Okay. As the director of pharmacy
21 operations, my understanding is that you
22 supervised all pharmacy employees for the DDM
23 stores?

24 A. Yes.

1 Q. And that would include -- was that
2 74 stores most of the time?

3 A. Yes.

4 Q. Okay. And how many pharmacists
5 did each store have on average?

6 A. Minimum of two at each store.
7 Then some stores had three, and we also had
8 floating pharmacists. So we might have had 150
9 pharmacists or so. Maybe a little more.

10 Q. Okay. So in terms of the
11 hierarchy, it's Tom Nameth, director of pharmacy
12 operations, here, right? And then you have
13 your -- the regional managers over here under
14 Pete or were they under you?

15 A. They were actually -- well, they
16 were, I would say, under me and then Pete -- and
17 then the hierarchy would be Pete and myself, the
18 supervisors, then the chief pharmacists, and
19 then the staff pharmacists.

20 Q. Okay. How many supervisors were
21 there?

22 A. I believe around four, maybe five.

23 Q. Is that pretty consistent --

24 MR. JOHNSON: Objection. Which

1 period of time?

2 A. Yeah, that's --

3 MR. JOHNSON: It's kind of a

4 long --

5 MR. MULLIGAN: Well, I just asked

6 him whether that was --

7 MR. JOHNSON: Okay.

8 MR. MULLIGAN: Yeah.

9 BY MR. MULLIGAN:

10 Q. Was that a consistent number or
11 did it change over time?

12 A. It changed over time.

13 Q. Okay.

14 A. I mean, when I first came on, we
15 didn't have any, and then we added as we grew.

16 Q. Okay. More work, you need more
17 people?

18 A. Correct.

19 Q. Okay. So then you got the
20 supervisors and then you have the chief
21 pharmacists who run the store pharmacies?

22 A. Yes.

23 Q. Okay. And then underneath that
24 you've got like a secondary pharmacist?

1 A. The staff pharmacist, yes.

2 Q. Okay. And then you've got
3 floating pharmacists?

4 A. Yes.

5 Q. And then were pharmacy technicians
6 the next level?

7 A. I would say yes.

8 Q. Okay. Was there anybody else that
9 worked in the pharmacy that reported to you?

10 A. No.

11 Q. Okay. Other than that report that
12 we just talked about, was there anything that
13 you did to monitor for suspicious orders that
14 were placed by DDM stores?

15 A. Not specifically. Not to me, no.

16 Q. Okay. And when you say "not to
17 me," what do you mean by that?

18 A. Well, there were other -- there
19 were other aspects of our SOMS report, but it
20 was basically maybe what Jill Strang, who ran
21 the warehouse, would be looking at.

22 Q. Okay. Other than what Jill Strang
23 did and what you did, which we just talked
24 about, was there anything else that was done at

1 DDM to monitor for suspicious orders, that you
2 know of?

3 A. Yes. The store levels did their
4 monthly counts.

5 Q. Okay.

6 A. And they would actually do
7 running -- running tallies as well. You know,
8 probably after we had our new pharmacy system in
9 place, they were doing that. It was a -- you
10 know, in the later years, maybe '12 and on.

11 Q. Okay. But on a corporate level it
12 was you and Jill?

13 A. A corporate level, right.

14 Q. Okay. And then on a store level,
15 you guys relied on the pharmacists entirely,
16 right?

17 A. We also had our store supervisors
18 that would go in, visit the stores, and they
19 would do sporadic drug counts just to make sure
20 that there was -- you know, so nobody would know
21 what we're going to be counting, they would go
22 into the stores, visit the stores, and do some
23 counts on their own.

24 Q. Okay. And that's an inventory

1 thing, right?

2 A. Yes, just to match what's on the
3 shelf versus what's -- yes.

4 Q. And the goal of that really was to
5 identify whether someone had stolen the drugs
6 either in transit or at the store level,
7 correct?

8 A. Anywhere, yeah.

9 Q. Okay. But that wasn't done to
10 identify suspicious orders --

11 A. Oh, no.

12 Q. -- being placed with the
13 warehouse?

14 A. Correct. No.

15 Q. We're stepping on each other a
16 little bit. Just a reminder.

17 Okay. So you are a pharmacist,
18 right?

19 A. Yes.

20 Q. And so -- and obviously you had a
21 very long and successful career as a pharmacist,
22 agree?

23 A. Yes.

24 Q. And so would it be fair to say

1 that you have an intimate understanding of how
2 the Controlled Substances Act works?

3 A. Yes --

4 Q. Okay.

5 A. -- to my knowledge.

6 Q. Okay. Are you concerned that you
7 don't have a full understanding of how the
8 Controlled Substances Act works?

9 A. No. But I mean the hierarchy was
10 involved maybe where our VP would be more
11 involved than I would as far as -- you know, I
12 don't know what specific aspect of it you're
13 referring to.

14 Q. Okay. And the -- okay.

15 You agree that controlled
16 substances are heavily regulated by the federal
17 government because they're dangerous, right?

18 A. Yes.

19 Q. Okay. And they're especially
20 dangerous if they're abused or diverted,
21 correct?

22 A. Yes.

23 Q. Okay. And you'd also agree that
24 they're highly addictive, right?

1 A. They are.

2 Q. And if they are used improperly,
3 they can even be deadly, right?

4 A. Yes.

5 Q. Okay.

6 A. As well as any drug can.

7 MR. MULLIGAN: Move to strike as
8 nonresponsive.

9 Q. All right. I'm going to hand you
10 what Mr. -- well, Mr. Knoll is going to hand you
11 what's being marked as Exhibit 1, which is
12 Plaintiffs' Notice of Oral Videotaped Fact
13 Deposition of Tom Nameth.

14 - - -

15 (DDM-Nameth Exhibit 1 marked.)

16 - - -

17 BY MR. MULLIGAN:

18 Q. And again, you can look at the
19 screen if you want. It's a little small right
20 now, but ...

21 MR. JOHNSON: It's going to be on
22 the screen eventually.

23 Q. I just want to know if you've seen
24 that document before.

1 A. Yes.

2 Q. And when was the first time you
3 saw it?

4 A. When our lawyer sent it to me.

5 Q. Okay. When was that?

6 A. Several weeks ago.

7 Q. Okay. And I imagine being retired
8 at that point, you were probably not all that
9 happy about having to come and be deposed,
10 right?

11 A. True.

12 Q. Okay. What did you do to prepare
13 for today's deposition?

14 A. I -- a lawyer sent the deposition
15 of several people to me, which I reviewed, and
16 then we also met with Tim Johnson at the
17 corporate office.

18 Q. Okay. And whose depositions did
19 you review?

20 A. Jason Briscoe, Pete Ratycz, and I
21 briefly went over Keith Miller's.

22 Q. Okay. Anybody else?

23 A. No.

24 Q. Did you see anything in those

1 depositions that jumped out at you?

2 A. No.

3 Q. Okay. Nothing that you thought

4 was incorrect or needed to be corrected?

5 A. Nothing that would have any
6 pertinence to the findings. I mean, there were
7 some dates that might have been erroneous
8 but ...

9 Q. But generally the processes that
10 were discussed regarding suspicious order
11 monitoring policies at DDM were accurate?

12 A. Right. Yes.

13 Q. Okay. When did you -- you said
14 that you got an e-mail from a lawyer with those
15 transcripts; is that correct?

16 A. Tim Johnson, yes.

17 Q. Okay. And was that before you'd
18 ever met with him?

19 A. Yes.

20 Q. Okay. And did you meet with him
21 in advance of today's deposition?

22 A. Yes.

23 Q. And when was that?

24 A. That was on Saturday, this

1 Saturday.

2 Q. Okay. And you said that was at
3 DDM headquarters?

4 A. Correct.

5 Q. How long did you meet for?

6 A. About four hours.

7 Q. Okay. Was anybody else present?

8 A. Jason Briscoe, Tom McConnell. And
9 John Gans was there for a portion.

10 Q. Did you review -- other than those
11 three depositions, did you review any other
12 paper or electronic files in preparation for
13 your deposition today?

14 A. We looked at some e-mails.

15 Q. Do you know which e-mails?

16 A. I don't have any specifics.

17 E-mails that were sent by maybe myself. There
18 weren't too many of them, so ...

19 Q. Did somebody else choose those
20 e-mails?

21 A. Tim Johnson handed to me from the
22 file.

23 Q. Okay. And you don't have any
24 recollection, as you sit here two days later, as

1 to what any of those e-mails discussed?

2 A. Some of them were discussing
3 counts, and I believe some -- one of -- the one
4 on the count was asking about -- asking the
5 pharmacist whether or not they included the
6 return solution -- the drugs that went to return
7 solutions. They were trying to balance the
8 count at the store.

9 Q. Okay. So e-mails regarding
10 inventory issues?

11 A. You mean at this particular --
12 yes.

13 Q. Correct. Were there any other
14 e-mails that you reviewed that were not related
15 to inventory counts?

16 A. There was an e-mail that was sent
17 from -- by Jill to a drug manufacturer asking
18 about our policy and procedures.

19 Q. Okay. Any other e-mails?

20 A. We looked at a lot of information
21 that day, so those are the only ones that stand
22 out in my mind.

23 Q. Okay. How many e-mails or
24 electronic files would you say you looked at, if

1 you had to estimate?

2 A. Total number of files?

3 Q. Mm-hmm.

4 A. Five or six.

5 Q. Okay. So when you say you looked

6 at a lot of information, was that just within

7 those five or six documents?

8 A. Yes. There was a lot of

9 discussions going on as far as the other

10 depositions.

11 Q. Okay. Did the depositions refresh

12 your recollection about any facts that you

13 didn't -- that you didn't remember as of

14 Saturday?

15 A. Yeah. There was a lot I didn't

16 remember about prior to that, but, you know,

17 being retired, you kind of, you know, step away

18 from that aspect and --

19 Q. Right.

20 A. -- you have to refresh your

21 memory, so to speak.

22 Q. Okay. So we're obviously here

23 today to test your knowledge, okay, your

24 personal knowledge, and technically your

1 personal knowledge doesn't include other
2 people's deposition testimony.

3 So what I would ask is, if there's
4 anything that I ask you today that you only know
5 because you read those depositions, will you
6 please let me know that?

7 A. Sure.

8 Q. Okay. Because I really -- I want
9 to know what you know --

10 A. Yes.

11 Q. -- and obviously since you've been
12 retired, there's maybe some things you don't
13 know anymore, but I want to try and isolate what
14 you know from what they've testified to already.

15 A. Okay.

16 Q. Fair?

17 A. I agree.

18 Q. Okay. Did you -- other than the
19 individuals you mentioned, did you talk to
20 anybody else in preparation for today's
21 deposition?

22 A. When I went to the corporate
23 office, I did -- and talked to Pete and Jason,
24 but that was not with any specifics.

1 Q. Okay.

2 A. It was a general -- my -- I was
3 more interested in the procedures, you know,
4 what does this entail, type of things. And at
5 that time I don't think either one of them had
6 been deposed anyway, so ...

7 Q. And what did you guys discuss
8 specifically?

9 A. In generalities of the lawsuit in
10 general.

11 Q. Okay. Did you discuss what DDM's
12 position was going to be as to what its
13 suspicious order monitoring policies were?

14 A. No.

15 Q. There was no discussion about
16 that?

17 A. No.

18 Q. Okay. So the discussion, would it
19 be fair to say, was limited to sort of the
20 procedural posture of this case; would that be
21 fair?

22 A. Yeah. My concern was, you know,
23 do I have any responsibility, legality -- legal
24 responsibilities, or are they just looking at

1 the corporation as a whole, do I need my own
2 lawyer, do I have a corporate lawyer, those
3 types of things.

4 Q. All very good questions, right?
5 That's probably what I would be asking, too.

6 Okay. All right. And as you
7 know, we haven't sued you individually, right?

8 A. Right.

9 Q. Okay. So you know you don't have
10 any personal responsibility as it relates to --

11 A. I know now.

12 Q. -- liability?

13 A. Yes.

14 Q. Okay. It's good to clarify that.

15 A. Yeah.

16 Q. Okay. Let's look at Exhibit 2.

17 - - -

18 (DDM-Nameth Exhibit 2 marked.)

19 - - -

20 Q. This is Discount Drug Mart's
21 Responses to Plaintiffs' First Set of
22 Interrogatories. I'm only going to ask you
23 about certain portions of this document. I'll
24 just tell you it's a document that DDM's lawyers

1 completed, with the help of some individuals.

2 And I want to just know, are
3 you -- did you assist in preparing these answers
4 in any way?

5 A. No.

6 Q. Okay. And so you weren't
7 contacted and asked to help provide answers to
8 this document; is that fair?

9 A. That's correct.

10 Q. Okay. And I'll just represent to
11 you, this was served on October 29th of 2018.
12 Had you been contacted about this litigation or
13 did you know about this litigation as of that
14 date?

15 A. No.

16 Q. Okay. If you can turn to page 3.
17 This is Interrogatory Number 4. And it says --
18 I'm going to skip -- I'm not going to read it
19 verbatim but, "Please identify any orders
20 you" -- and that's DDM -- "received that were at
21 any point identified as a possible suspicious
22 order."

23 Do you see that?

24 A. Yes.

1 Q. And if you go down to the response
2 at the bottom, it says "None."

3 Do you see?

4 A. Mm-hmm.

5 Q. Would that be accurate based on
6 your understanding of -- from your role at DDM?

7 A. When you say -- when you throw in
8 the word a "possible" suspicious order, there
9 could have been -- there could have been
10 possible suspicious orders, because then we
11 would have to follow up and determine whether it
12 was suspicious or not.

13 Q. Okay. So depending upon how one
14 would define "possible suspicious order," you'd
15 agree that that could -- may or may not include
16 orders or histories that show up on your
17 12-month rolling report, correct?

18 A. Yes.

19 Q. Okay. And to the extent that you
20 then decided to do due diligence and got an
21 explanation, then potentially those would be not
22 considered suspicious orders at that point,
23 correct?

24 A. Correct.

1 Q. Okay. And so you were the one who
2 was determining whether those possible -- well,
3 strike that.

4 They weren't really orders, right?
5 They were ordering histories, weren't they, for
6 the prior month?

7 A. Yes.

8 Q. Okay. So you would decide whether
9 the ordering history from the prior month was
10 suspicious, but it being on that report to you
11 would be an indication that it was possibly
12 suspicious, right?

13 A. Correct.

14 Q. Okay. And to the extent that you
15 got a sufficient explanation, then they would --
16 you'd just say, "Well, check that box. It's not
17 suspicious." Right?

18 A. Right.

19 Q. Okay. When you got that report,
20 did you ever just report that to the DEA, the
21 fact that a store appeared on there and had a
22 larger had than normal ordering history?

23 A. Other than ARCOS?

24 Q. I'm asking if you --

1 A. We reported to ARCOS but not to
2 that report.

3 Q. Okay.

4 A. Not that report.

5 Q. You didn't fill out -- you didn't
6 specifically report that -- those as possible
7 suspicious orders to the DEA, correct?

8 A. Correct, because they weren't
9 suspicious at that time.

10 Q. Okay. But you would agree that
11 they were possibly suspicious, right?

12 A. They could have been.

13 Q. Okay. Do you know whether the
14 reporting obligation under the Controlled
15 Substances Act requires you to report possible
16 suspicious orders?

17 A. I'm not aware of that.

18 Q. Okay. Do you know what the
19 criteria is that the CSA provides for when you
20 have to report a suspicious order?

21 A. Say again.

22 Q. Do you -- what is the -- do you --
23 well, strike that.

24 Do you generally know, as you sit

1 here today, what types of orders should be
2 reported to the DEA under the Controlled
3 Substances Act?

4 A. Suspicious orders.

5 Q. Okay. And how would you define a
6 suspicious order?

7 A. One that we could not identify a
8 reason of why it was ordered.

9 Q. Okay. And so my understanding is
10 that you don't believe that the Controlled
11 Substances Act required you to report possible
12 suspicious orders, only suspicious ones,
13 correct?

14 A. Yes.

15 Q. And it was okay that you didn't
16 report an order until after due diligence was
17 done to determine whether it was, in fact,
18 suspicious, correct?

19 A. Yes.

20 Q. Okay. And if that due diligence
21 took a week, it was okay for you to take that
22 time to determine whether the order was
23 suspicious or not before you could report it to
24 the DEA, correct?

1 A. Yes.

2 Q. And that's how you operated at
3 DDM?

4 A. Yes.

5 Q. Okay. Was there ever an instance
6 at DDM where you found a possible suspicious
7 order and you reported it immediately to the
8 DEA?

9 A. No.

10 Q. Was there ever a time when you
11 reported any order as suspicious to the DEA at
12 any time?

13 A. We did not.

14 Q. Okay. That would include you and
15 anyone else; is that fair?

16 A. To my knowledge, yes.

17 Q. Okay. Is that knowledge partially
18 reflective of what you read in those
19 depositions?

20 A. No. I'm just speaking -- I don't
21 recall -- I mean, you know, not that I'm aware
22 of that we ever reported a suspicious order to
23 the DEA.

24 Q. Okay. Okay. So let's go back to

1 Interrogatory Number 4, and I think as you aptly
2 pointed out, it includes the words "possible
3 suspicious order," correct?

4 A. Yes.

5 Q. And so with the addition of that
6 word, would you agree that any order that
7 appeared on your 12-month report should probably
8 be listed here in the response?

9 MR. JOHNSON: Objection.

10 A. When you list this as possible
11 suspicious orders, then I guess anything on the
12 report could be provided.

13 Q. Except for the fact maybe that
14 that report didn't actually show specific
15 orders, right, it just showed how much you had
16 ordered in the month?

17 A. Correct.

18 Q. Okay. And so let's look at the
19 information that was requested for each of
20 those. It says, "The date of the suspicious
21 order and the customer's identity and address."

22 Do you see that under a?

23 A. Yes.

24 Q. That -- your report wouldn't

1 actually show the date of the suspicious order,
2 would it?

3 A. No.

4 Q. Okay. It would just show how much
5 was ordered the month -- in that month, right?

6 A. Yes.

7 Q. Okay. And then b, "A description
8 of said order." Would that information be
9 contained in that report?

10 A. Yes.

11 Q. So like how much was ordered --
12 the --

13 A. The description being the type of
14 drug that it was.

15 Q. Would that include NDC number?

16 A. Yes.

17 Q. The name of the drug?

18 A. Yes.

19 Q. Where the drug came from, like the
20 manufacturer?

21 A. That would -- that's by the NDC
22 number you would know what manufacturer.

23 Q. Okay. And it would have like
24 quantity and strength?

1 A. Yes.

2 Q. And under c, obviously none of
3 them were ever reported to the DEA, correct?

4 A. Correct.

5 Q. Okay. And the due diligence that
6 would have been performed on anything that
7 showed up on that 12-month report would have
8 been the form you sent to the stores; is that
9 correct?

10 A. Yes.

11 Q. And would there be any other
12 documentation to reflect any due diligence that
13 was done?

14 A. Not to my knowledge, no.

15 Q. Okay. Did you keep files in your
16 office or that were accessible to you that
17 contained those documents or some sort of a
18 running file that would show your due diligence
19 over time as it related to a particular store?

20 A. Yes.

21 Q. And would that just be by store?

22 A. It would be by month.

23 Q. So it would be by month, not by
24 store?

1 A. Correct.

2 Q. Okay. And would that basically
3 consist of you taking the report that was
4 printed out and just putting it in a file?

5 A. Well, the reports -- those whole
6 reports were kept. Usually I indicated on the
7 report which ones that I notified the stores
8 about, on that report. But then also when the
9 report was generated and went out to the stores,
10 there was also a follow up that had to make sure
11 that those answers were received.

12 Q. Okay. And so you would write on
13 the physical report that was printed each month?

14 A. Yes.

15 Q. And was that report only in hard
16 copy?

17 A. Yes.

18 Q. And -- but you retained that
19 report?

20 A. Yes.

21 Q. Do you know whether DDM still has
22 those reports?

23 A. I can't answer that.

24 Q. Okay. Would you have written the

1 reasons why you determined a possible suspicious
2 order was not suspicious on that report?

3 A. No.

4 Q. Would that be reflected in the
5 form that you sent to the store?

6 A. Correct.

7 Q. Okay. Did you ever halt or
8 suspend any order as suspicious?

9 A. Did not.

10 Q. Okay. And, in fact, I believe the
11 report you've been talking about, the 12-month
12 report, was a retrospective report, correct?

13 A. Yes.

14 Q. So that report was not -- didn't
15 work in a way that would allow you to stop an
16 order before it was filled, right?

17 A. No. But there was another report
18 that was generated that Jill looked at that
19 could have fulfilled that.

20 Q. Okay. And so the only prospective
21 system that was in place at DDM to identify
22 suspicious orders, that you know of, was the
23 report that Jill looked at, correct?

24 A. Yes.

1 Q. Okay. And so it wasn't your job
2 or responsibility to identify orders that were
3 suspicious and should be halted before they went
4 out, correct?

5 A. Say again.

6 Q. It wasn't your job or
7 responsibility at DDM to identify suspicious
8 orders and then halt them before they went out,
9 correct?

10 A. Well, you're using the term
11 "suspicious order." We didn't -- but if there
12 was a suspicious order, then they would have
13 gone out. We would have followed up at the back
14 side, on the back end.

15 Q. They would have gone out but you
16 would have followed up later?

17 A. Yes.

18 Q. Okay. Do you know whether that
19 complies with the Controlled Substances Act
20 requirement that you have effective controls in
21 place to prevent against diversion?

22 A. Well, when you look at our -- you
23 know, because we're still a closed system, there
24 was some conversations whether or not, because

1 we didn't -- it didn't leave our -- in other
2 words, it didn't leave our small group of
3 individual stores, because they're still within
4 our family of stores, that we let the orders go,
5 but we could follow up and then -- we didn't cut
6 orders, so to speak, before they went out the
7 door.

8 Q. Okay. So it would be fair to say
9 that DDM -- the extent of DDM's system to put in
10 place effective controls to prevent diversion
11 would have been reliance on the pharmacist; is
12 that fair?

13 A. Yes.

14 Q. Okay. All right. If you look at
15 5. It says, "Please identify any persons" --
16 I'm going to paraphrase -- "who reviewed or
17 analyzed data regarding the distribution or
18 dispensing of opioids or your opioid products."

19 Do you see that?

20 A. Mm-hmm.

21 Q. Okay. And if you flip the next
22 page, it's got yourself, Jill Strang, Jason
23 Briscoe, and Pete Ratycz.

24 Do you see that?

1 A. Yes, I do.

2 Q. Did you ever review any reports
3 that reflected ordering history of opioids over
4 time?

5 A. Other than the report that I
6 reviewed?

7 Q. Correct.

8 A. No.

9 Q. Okay. And that report only showed
10 what the average was for the prior 12 months,
11 correct?

12 A. Yes.

13 Q. Okay. So you didn't look at any
14 reports that showed, over the last three years
15 Store 33's orders have gone from X to Y,
16 correct?

17 A. That's correct.

18 Q. Okay. Do you know if anybody else
19 did?

20 A. Not that I'm aware of.

21 Q. Okay. And so would the only
22 information that you analyzed regarding the
23 distribution or dispensing of opioids be that
24 12-month rolling report?

1 A. Yes.

2 Q. Okay. Do you know whether anybody
3 else at DDM reviewed any report other than that
4 one which would have allowed them to analyze the
5 movement of opioids?

6 A. Unless it was Pete in his
7 responsibilities. I wasn't quite sure from a
8 30-foot -- 30,000-foot level what he was doing.
9 He could have been. I wasn't aware of it.

10 Q. Okay. But he was running the
11 show, right?

12 A. Yes.

13 Q. And your piece of this was to
14 review and monitor that 12-month rolling report?

15 A. Right. Right.

16 Q. Okay. And that -- it was limited
17 to that, correct?

18 A. Correct.

19 Q. Okay. Let's go to Interrogatory
20 Number 12, which is on page 6. So this one
21 asks, "Please identify" -- or "For each
22 customer" -- and that would be a DDM store in
23 this context. "Please identify their thresholds
24 and/or controlled substance limits at the time

1 the order -- of the order and identify personnel
2 who were responsible for establishing and/or
3 approving any thresholds or controlled substance
4 limit, as well as any overrides."

5 Do you see that?

6 A. Mm-hmm.

7 Q. And the answer there is "None,"
8 right?

9 A. That's the answer, yes.

10 Q. Would that be consistent with your
11 understanding of how DDM operated?

12 A. I'm reading through it again.

13 Q. Sure.

14 MR. JOHNSON: It's also up on the
15 screen if that's easier for you.

16 THE WITNESS: Yeah, that's
17 probably easier.

18 BY MR. MULLIGAN

19 Q. Maybe I can para -- I --

20 MR. JOHNSON: It takes getting
21 used to.

22 MR. MULLIGAN: Sure. Yeah.

23 BY MR. MULLIGAN:

24 Q. And I can paraphrase even more.

1 Really what I'm asking is, did -- were there --
2 were -- did individual DDM stores ever have any
3 thresholds for how much they could order?

4 A. No.

5 Q. Okay. And so there would never
6 have been a time where Store 33 ordered X amount
7 and automatically that order would be halted if
8 it exceeded a certain limit, correct?

9 A. Correct.

10 Q. Okay. Did DDM ever discuss the
11 merits of imposing thresholds upon its stores?

12 A. No, but it could have been at a
13 different level.

14 Q. Okay. So nobody ever approached
15 you and said, "Hey, maybe we should put some
16 thresholds on our stores in light of the opioid
17 crisis that seems to be developing"?

18 A. Well, all our C-IIs did not come
19 from our warehouse. The only thing that was
20 coming from our warehouse was the hydrocodones.

21 Q. Okay.

22 A. So there were -- I assume there
23 were limits from the wholesalers.

24 Q. Okay. At some point, DDM stores

1 did obtain hydrocodone from your distribution
2 center, correct?

3 A. Yes.

4 Q. Okay. But there were never any
5 thresholds put in place where orders were
6 automatically cut if they exceeded --

7 A. No.

8 Q. -- a certain threshold, right?

9 A. Correct.

10 MR. JOHNSON: You're answering his
11 question before he gets it out, but ...

12 MR. MULLIGAN: It's not uncommon,
13 but, you know, thanks for the reminder.

14 MR. JOHNSON: Is this a good time
15 for a break or --

16 MR. MULLIGAN: Yeah. We can --

17 MR. JOHNSON: -- did you want to
18 finish this?

19 MR. MULLIGAN: Well, let me finish
20 this document, if that's all right.

21 MR. JOHNSON: Okay.

22 BY MR. MULLIGAN:

23 Q. And so you don't ever recall ever
24 having a discussion at DDM about whether a

1 threshold should be put in place for, let's say,
2 hydrocodone?

3 A. I don't recall that, no.

4 Q. Okay. Did you ever have any
5 concern about whether a threshold should be put
6 in place?

7 A. No. My concern was as the -- as
8 long as the pharmacists were doing their job at
9 the store level, that would -- because you're
10 working backwards from that point, I would
11 assume that at that point that we were filling
12 needed prescriptions, so we didn't put anything
13 else in place.

14 Q. And so you felt comfortable not
15 putting that safety measure in place because you
16 knew and trusted your pharmacy staff, correct?

17 A. Correct.

18 Q. All right. Let's go to
19 Interrogatory Number 14, which is on page 7.
20 And this asks to "identify all persons
21 responsible for administering, overseeing,
22 developing, and/or implementing all policies,
23 procedures, systems, or programs designed to
24 detect and report suspicious orders or to

1 maintain effective controls against diversion."

2 Do you see that?

3 A. Yes.

4 Q. Is there anybody that should be on
5 this list that's not on here?

6 A. No.

7 Q. Okay. Would it be fair to say
8 that your role in response to this question was
9 simply administering, overseeing, and
10 implementing that 12-month average rolling
11 report?

12 A. Correct.

13 Q. Did you ever help to administer,
14 oversee or implement any other portion of the
15 suspicious order monitoring policies?

16 A. In the design or the policy
17 itself?

18 Q. Well, let's start with design.
19 Did you help design any other component of the
20 monitoring policies?

21 A. No.

22 Q. Okay. Did you help to administer
23 any other portion of the monitoring policies?

24 A. No. But in regard to if Jill had

1 a question with regards to the six-week order,
2 that six-week average, she had the ability to
3 come to us and ask questions about it prior. So
4 there was another aspect other than the 12-month
5 average that I could have had an input in. But
6 I don't know if that's what you're after.

7 Q. Sure. Did you ever go and meet
8 with Jill on a periodic basis to discuss any
9 possible suspicious orders?

10 A. No.

11 Q. Have you ever met with Jill at any
12 time to discuss possible suspicious orders from
13 stores?

14 A. As far as her report was
15 concerned?

16 Q. Just in general about --

17 A. In general? Not to my knowledge.

18 Q. Okay. Let's go to page 12, which
19 is Interrogatory Number 26. And this says,
20 "Please identify for all your subsidiaries,
21 affiliates, et cetera" -- which is probably
22 poorly worded -- "who were involved in
23 distributing opioids or opioid products in the
24 State of Ohio the following: A, board of

1 directors; b, senior management; c, person in
2 charge of detecting and preventing diversion;
3 all persons employed by that exact entity
4 involved in detecting and preventing diversion;
5 and e, total number of employees." And then
6 there's "f, address of each facility."

7 So c is "person in charge of
8 detecting and preventing diversion." And if you
9 look on the answer, c lists Pete Ratycz.

10 Do you see that?

11 A. Mm-hmm.

12 Q. Would you agree that he was the
13 person in charge of detecting and preventing
14 diversion at DDM?

15 A. Yes.

16 Q. And I would imagine, based on the
17 testimony that you've given today and what we
18 know, that the two prongs of that were the
19 12-month rolling average report that you were
20 responsible for and the greater than six-week
21 average report that Jill was responsible for; is
22 that fair?

23 A. That was a portion of it, yeah --

24 Q. Okay.

1 A. -- and then we would determine
2 whether or not from that point.

3 Q. And then the due diligence would
4 be the last piece?

5 A. Correct.

6 Q. But that was the whole system,
7 correct?

8 A. Yes.

9 Q. Okay. Who is John Gans?

10 A. He's the president of the company.

11 Q. And do you know what role he
12 played in suspicious order monitoring?

13 A. Very little. I mean, John was
14 more or less in charge of the company, not
15 the -- he had really no functionality in
16 pharmacy.

17 Q. Okay. Did he play any role in
18 helping to design DDM's suspicious order
19 monitoring policies and procedures?

20 A. No.

21 Q. Okay. Do you know whether he ever
22 asked to be informed or updated as to what they
23 were?

24 A. I don't believe so.

1 Q. Okay. Do you ever remember
2 meeting with him or anyone else in senior
3 management regarding the adequacy of DDM's
4 suspicious order monitoring policies once the
5 opioid epidemic became more apparent?

6 A. Other than Pete?

7 Q. Correct.

8 A. No.

9 Q. Did you and Pete and Jill ever sit
10 down to discuss the adequacy of DDM's suspicious
11 order monitoring policies?

12 A. Not that I recall.

13 Q. Did you ever have any concerns
14 that DDM's suspicious order monitoring policies
15 and procedures were inadequate to identify
16 suspicious orders in advance of them going out?

17 A. No. I don't think that -- you're
18 talking about in advance now?

19 Q. Correct.

20 A. We thought that -- we never had an
21 instance where we had a suspicious order after
22 our due diligence, and so it wouldn't lend us to
23 be suspicious or to have concerns about it.

24 Q. And when you say you never had a

1 suspicious order, what you really mean is you
2 never identified an order as suspicious,
3 correct?

4 A. Well, we looked at --

5 MR. JOHNSON: Objection.

6 A. -- we looked at them all. I don't
7 think we ever had a suspicious order.

8 Q. Okay. But do you get my -- in
9 order for it to be suspicious, someone has to
10 look at it and say, "That doesn't look right,"
11 correct?

12 A. Correct.

13 Q. Okay. And so your ability to
14 identify it is only as good as the person who's
15 looking at the information and the criteria that
16 they're applying, correct?

17 A. Correct.

18 Q. Okay. And I recognize this
19 document's a little bit long. I'm trying to get
20 through it so we can all take a break. I
21 apologize.

22 All right. D asks for, "All
23 persons employed by the exact entity involved in
24 detecting and preventing diversion."

1 Do you see that?

2 A. Mm-hmm.

3 Q. And the answer is, "All pharmacy
4 employees."

5 Do you see that?

6 A. Yes.

7 Q. And that's what we were talking
8 about earlier about how you guys relied on the
9 pharmacy employees, correct?

10 A. Correct.

11 Q. Okay. How many pharmacy employees
12 did you have at a given time? And we talked
13 about all the levels.

14 A. Around 180 maybe, in that range.

15 Q. Okay. So out of the
16 4,000-some-odd DDM employees, there's only 180
17 pharmacy employees?

18 A. Yes.

19 Q. Does that include the techs and
20 the floaters?

21 A. It does not.

22 Q. Okay. So if you include the --

23 A. Pharmacists.

24 Q. -- the regional people, the chief,

1 the staff, the floater and the techs, how many
2 would you have?

3 A. Including regional?

4 Q. Mm-hmm.

5 A. Maybe 190.

6 Q. So only 190 employees?

7 A. In the pharmacy?

8 Q. Correct.

9 A. As far as that handled the
10 controlled drugs?

11 Q. I'm just asking how many pharmacy
12 employees you had that included the regional
13 supervisors, the chief pharmacists, the staff
14 pharmacists, the floating pharmacists, and the
15 pharmacy techs.

16 A. I would say that number is in that
17 range, about 190 or so.

18 Q. Did you know them all on a name
19 basis?

20 A. Yes.

21 Q. Could you have walked into any
22 store on any given day and known the names of
23 every single person working in the pharmacy?

24 A. Yes.

1 Q. Okay. Did anybody ever indicate
2 to you that they were concerned that there were
3 suspicious orders being placed in the DDM
4 system?

5 A. No.

6 MR. MULLIGAN: All right. Now, we
7 can take a break.

8 MR. JOHNSON: Okay.

9 MR. MULLIGAN: Sorry about that.

10 THE VIDEOGRAPHER: We're going off
11 the record at 10:36.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We're back on
14 the record at 10:49.

15 BY MR. MULLIGAN:

16 Q. Earlier we were talking about the
17 trust that you place in the pharmacists and the
18 pharmacy employees at DDM, correct?

19 A. Correct.

20 Q. And did you do anything to verify
21 that the pharmacy level employees were doing
22 everything they could to prevent diversion,
23 other than trusting them?

24 A. Making sure that when the

1 supervisors were going to the stores, that they
2 were not filling scripts that were maybe out of
3 state or those type of things. But you're
4 talking about diversion, a theft diversion or
5 any diversion, what?

6 Q. I'm just talking about any
7 diversion. It sounds like a large piece of your
8 suspicious order monitoring was trust, and I
9 want to know what you did -- was it just trust
10 or was it trust and verify or was it -- how
11 would you describe it?

12 A. Well, we would be able to make
13 sure that the scripts that were being filled
14 were not from out of state through -- we would
15 actually go through the -- the supervisors would
16 go through on an ad hoc basis and review certain
17 scripts to make sure that they were complying
18 and nothing would show up as far as filling
19 out-of-state scripts and those types of issues.

20 Plus the State Board of Pharmacy
21 was very strict as far as regulating what we
22 did. They gave a lot of direction as far as
23 what the pharmacists should be looking for and
24 so ...

1 Q. What I'm asking is --

2 A. But as far as -- we were going in
3 the store levels --

4 Q. So on an ad hoc basis, you would
5 go and look and see whether any scripts were
6 being filled for people who were geographically
7 not supposed to be at that store; is that fair?

8 A. Yeah, because of -- the
9 supervisors would actually review. They would
10 go through, you know, unmarked particular
11 scripts and look and see if the quantities were
12 verified by what they filled and those types of
13 things, making sure that the addresses were on
14 the script, that the pharmacists were doing
15 their job by that, making sure that they were
16 local people not filling scripts from, you know,
17 out of the --

18 Q. Sure.

19 A. -- out of state.

20 Q. Was there anything else that
21 anybody underneath you did, other than the
22 pharmacists, to verify that what the pharmacists
23 were doing was on the up and up?

24 A. Not to my knowledge, no.

1 Q. Okay. And you'd agree that the
2 way that you used the -- well, strike that.

3 You'd agree that the lack of
4 criteria that was put in place at DDM regarding
5 the evaluation of your 12-month report meant
6 that the decisions that were made about whether
7 to follow up or not were subjective, not
8 objective, correct?

9 A. Correct.

10 Q. And they were your subjective
11 decisions, right?

12 A. Correct.

13 Q. Okay. Was there any reason why
14 DDM -- well, strike that.

15 Could DDM have designed a system
16 that would stop an order when placed if it
17 caused the store to exceed the 99 percent in
18 excess of the prior 12-month average?

19 A. Well, we felt that what we had in
20 place -- because we would review that, that we
21 didn't need to add an extra layer, because now
22 you're talking about basically black and white,
23 okay. You're looking at a number and that
24 number is going to stop you at that particular

1 threshold.

2 Q. Right.

3 A. We felt that it was not necessary
4 to do that because we were eyeballing it and
5 reviewing it and making sure that there was
6 reasons why. In other words -- yeah.

7 Q. So my question was, could you have
8 done that?

9 A. Could we? I can't answer that.
10 I'm not on the IT team. So I don't know what it
11 would take to do that.

12 Q. And I can imagine if it was
13 important enough, DDM could have done something
14 like that, right?

15 MR. JOHNSON: Objection.

16 A. We didn't see the need to do it.
17 I don't know if you're speculating could we,
18 should we, you know.

19 Q. And, again, I appreciate that. So
20 you didn't see the need to do it. But my
21 question is, do you know whether you could have
22 done it, and it sounds like you're not sure
23 whether you could have done it or not?

24 A. I'm not sure because I'm not on

1 the IT side.

2 Q. Okay. Was there ever any
3 discussion about whether a report like that
4 would be useful in detecting and halting
5 diversion in its tracks?

6 A. No.

7 Q. Okay. All right. We're going to
8 turn to what Mr. Knoll is going to mark as
9 Exhibit 3.

10 MR. MULLIGAN: Actually, you know
11 what, before we get there, Jon, I've got
12 a couple questions. So mark it and
13 we'll just --

14 BY MR. MULLIGAN:

15 Q. You'd agree, Mr. Nameth, that
16 patient and customer safety are DDM's first
17 priority?

18 A. I would agree.

19 Q. Okay. Along with maybe staying in
20 business?

21 A. Well ...

22 Q. Is that fair?

23 A. I would say that we have a
24 responsibility to our customers' patients, yes.

1 Q. Okay. Do you agree that DDM as a
2 handler of controlled substance also has an
3 obligation to the general public to prevent
4 diversion of opioids?

5 A. Yes.

6 Q. Okay. And would you agree that
7 DDM was legally required to implement a system
8 of effective controls to prevent diversion?

9 A. We were required to have a system.

10 Q. Okay. To prevent diversion,
11 correct?

12 A. Yes.

13 Q. Okay. And not to respond to it,
14 right?

15 A. Well, now, you're getting into --
16 we felt our system was adequate for what we
17 needed to be done.

18 Q. Okay. And what you needed to be
19 done is defined by the Controlled Substances
20 Act, right?

21 A. Yes.

22 Q. And you're a pharmacist, and you
23 know that, right?

24 A. Yes.

1 Q. Okay. And so let's talk about
2 this a little more.

3 Did that system have to prevent
4 diversion or simply identify it and respond to
5 it after the fact; do you know?

6 A. Well, it would prevent diversion
7 as far as looking at the system and knowing
8 whether it was diversion or not. If it wasn't,
9 then it wouldn't be diversion.

10 Q. Your report would only allow you
11 to identify it had already happened --

12 A. Yes.

13 Q. -- which would then potentially
14 enable you to try and stop it in the future,
15 right?

16 A. Well, but by following up,
17 wouldn't we be actually looking at that
18 particular issue?

19 Q. Well, you tell me.

20 A. Yes. I mean, we would look at a
21 particular issue and follow up with a written
22 report and find out whether it was diversion or
23 not. So ...

24 Q. But you'd agree that that's

1 identifying that diversion has already happened,
2 so it's not actually preventing diversion,
3 agree?

4 A. What it is, it's -- in my opinion,
5 it's preventing diversion by looking at the
6 system and determining whether there's diversion
7 or not. What you're asking is, are you going to
8 stop an order before it went out the door?

9 Q. Correct.

10 A. No, it did not.

11 Q. Okay. So it potentially was a
12 tool that could put you on notice that diversion
13 had already occurred and then give you the
14 option to try and stem it or prevent it in the
15 future, correct?

16 A. Yes.

17 Q. Okay. And you guys never
18 identified a suspicious order, right?

19 A. Right.

20 Q. And so you never determined that
21 any diversion was taking place regarding
22 suspicious orders, right?

23 A. Right.

24 Q. And so, therefore, you guys didn't

1 do anything to change what you were doing to
2 prevent future diversion, correct?

3 A. Correct.

4 Q. Okay. And you'd agree that DDM's
5 legal requirements to implement a system of
6 effective controls to prevent diversion would
7 include things like employee theft, right?

8 A. Yes.

9 Q. Okay. But you don't think that it
10 required you to identify and stop suspicious
11 orders before they went out; is that fair?

12 A. Yes.

13 Q. Okay. Would you agree that DDM
14 could not discharge its obligations under the
15 Controlled Substances Act by merely relying upon
16 pharmacists, or do you think that relying on the
17 pharmacists was sufficient?

18 A. We didn't rely on just the
19 pharmacists.

20 Q. So that's what you did. I'm
21 asking what would have been sufficient to
22 discharge DDM's obligations under the Controlled
23 Substances Act. Was relying on the pharmacists
24 enough, or did you have to do more?

1 A. Well, we did more as far as what
2 you're asking. We didn't rely just on the
3 pharmacists. We looked at our systems and then
4 did our due diligence and then moved forward
5 from that. So we weren't just relying on our
6 pharmacists, per se. We were look -- there's an
7 overseer to that aspect.

8 Q. But if a pharmacist told you that
9 they just needed the drugs, then that would be a
10 sufficient explanation, correct?

11 A. Correct.

12 Q. And you told me that you relied on
13 the pharmacists to identify whether diversion
14 was taking place through the prescription
15 process, right?

16 A. Correct.

17 Q. Okay. And so do you think relying
18 on the pharmacists for those two aspects of
19 suspicious order monitoring discharged DDM's
20 obligations under the Controlled Substances Act?

21 A. I don't -- I just don't think your
22 statement that relying only on the pharmacists
23 absolves Drug Mart from its obligations to
24 report. Is that what you're asking?

1 Q. I'm asking you whether DDM can
2 just rely on the pharmacists to identify
3 diversion at the store level, or whether DDM has
4 a corresponding obligation to double check and
5 try to identify diversion?

6 A. Well, there's certain layers. I
7 mean, you know, when you're asking about the
8 pharmacists at store level, you're asking about
9 just whether they're filling legitimate
10 prescriptions.

11 Q. Correct.

12 A. In that aspect of it, we're
13 relying on the pharmacists.

14 Q. You'd agree that that's a main
15 source of diversion, right, through illegitimate
16 prescriptions?

17 A. Well, that's not the only. I
18 mean, several years ago the DEA actually came
19 out and was on the news about how to take your
20 controlled substances and don't leave them in a
21 medicine cabinet if you have children. You
22 know, take that and place -- lock them up, do
23 something with it, because there was a huge
24 diversion at home level about legitimately

1 prescribed prescriptions getting into the hands
2 of people that it wasn't intended to do.

3 Q. Sure. And you can't do anything
4 about that, right?

5 A. I can't do anything about that.

6 Q. Okay. So what types of diversion
7 can DDM do something about?

8 A. We can -- theft.

9 Q. Okay. Like employee theft, right?

10 A. Employee theft, corporate theft,
11 warehouse theft.

12 Q. Anything else?

13 A. Making sure the pharmacists are
14 doing their due diligence at store level to fill
15 legitimate prescriptions.

16 Q. And you rely on them to do that,
17 right?

18 A. Yes.

19 Q. Are there any other avenues of
20 diversion, other than those four we just talked
21 about, that you can think of right now?

22 A. No.

23 Q. Okay. You'd agree that DDM is in
24 the best position to prevent diversion occurring

1 within its business, correct?

2 A. Yes.

3 Q. And you'd agree that DDM is in the
4 best position to ensure that its employees are
5 not diverting controlled substances, correct?

6 A. Yes.

7 Q. And you'd agree that DDM is in the
8 best position to identify suspicious orders
9 placed in its distribution center, correct?

10 A. Yes.

11 Q. And you'd agree that the same
12 would be true for a possible suspicious order,
13 correct?

14 A. Yes.

15 Q. And you'd agree that DDM had more
16 than enough information available to it to
17 identify possible suspicious orders before they
18 went out, correct?

19 A. I can't answer that.

20 Q. Why is that?

21 A. I don't know, because -- I don't
22 know whether we could respond to that through an
23 IT aspect, whether or not we could arrange a
24 prospective ordering process or stopping

1 process.

2 Q. As a pharmacist, and based on your
3 understanding of the Controlled Substances Act,
4 to the extent that DDM could have done that, do
5 you think it should have?

6 A. In my opinion, I think we -- the
7 system that we had was working well enough that
8 we didn't need to do that.

9 Q. Okay.

10 A. And there's other problems with
11 that. When you get into a system that only has
12 black and white, that doesn't look at anything
13 else besides the number.

14 Q. Okay.

15 A. We think by looking -- having an
16 eyeball on a human being, looking at -- knowing
17 our stores and knowing our pharmacists, knowing
18 the store locations, the growth of the store and
19 all that, we have actually maybe a better aspect
20 of what's going on at store level than someone
21 that's just doing a black and white aspect of
22 cutting an order.

23 Q. Why couldn't you do both?

24 A. We felt that we didn't need to.

1 Q. Would imposing a system that would
2 identify possible suspicious orders in advance
3 and halt shipments, that would create more work,
4 wouldn't it?

5 A. Well, if you're going to stop --

6 Q. It's a very simple question. I'm
7 just -- would it create more work or not?

8 A. You've got to create another
9 system.

10 Q. Okay. So it would be more work
11 for somebody at DDM, right?

12 A. But that's not why we did it --
13 didn't do it.

14 Q. But I didn't ask that question. I
15 just asked if it would create more work.

16 A. Possibly.

17 Q. Okay. Can you think of an
18 instance where it would create less work?

19 A. Depends how smart your system was.
20 I don't know.

21 Q. So but presumably if you put that
22 system in place, it would stop an order, right?
23 All of a sudden now someone's got to deal with a
24 stopped order, right?

1 A. Yes. Now -- so if you're saying
2 then you're going to stop an order and then have
3 somebody look at it and then override that
4 stopped order, then is there a reason why you're
5 stopping the order?

6 Q. Well, I mean, just let's say
7 there's an order that shows up on your 12-month
8 report. Let's say prospectively you get the
9 report, the second the order is placed, and it
10 says, "Hey, this person is ordering more than
11 what their average has been now with this last
12 order," you could do that, right?

13 A. So you're going to do exactly what
14 we're doing now in a quicker time -- in an
15 earlier time frame.

16 Q. It would be designed to catch
17 those orders before they went out, right?

18 A. Yes.

19 Q. Is there any reason why you
20 couldn't have done that, other than IT problems?

21 A. Not that I would recall.

22 Q. Okay. Do you think that a system
23 like that would have been useful to help stop --
24 to identify suspicious orders and stop

1 diversion?

2 A. Well, based on my knowledge and
3 looking at what I dealt with and the reason --
4 and not having a suspicious order, you know,
5 retrospectively in my mind, I wouldn't have a
6 need to do it.

7 Q. Okay. But, again, that's based on
8 the fact that you never personally identified an
9 order that you decided was suspicious, correct?

10 A. Correct.

11 Q. Okay. But if that system or that
12 report you reviewed was designed to generate
13 every time a store exceeded their threshold with
14 an order, that wouldn't require that much more
15 work for you, right? You might have had to look
16 at the report more often, but it would have been
17 the same process, right?

18 A. Yes.

19 Q. Okay. You would agree that DDM
20 had the tools necessary, therefore, to identify
21 suspicious orders, stop them before they went
22 out, and report them to the DEA immediately if
23 it chose to, correct?

24 A. I can't answer that, because

1 you're -- like I stated before, that I'm not
2 quite sure if our IT department would have the
3 ability to do that.

4 Q. Okay.

5 A. And you're saying they did.

6 Q. So you don't know, as you sit here
7 today, whether DDM had the tools necessary to
8 identify suspicious orders in advance and stop
9 them before they went out?

10 A. That's basically what I'm saying,
11 yeah, without looking into it further.

12 Q. Okay.

13 A. I mean, I can't answer that.

14 Q. So would that also mean that DDM
15 didn't actually do that?

16 A. No. I mean, you know, that they
17 looked at it and said that they weren't going to
18 do it?

19 Q. Well, you just told me you didn't
20 know whether DDM had the tools necessary to
21 identify a suspicious order and stop it before
22 it went out, right?

23 A. Right.

24 Q. So that would suggest to me that

1 DDM didn't identify suspicious orders or stop
2 them before they went out, right?

3 MR. JOHNSON: Objection.

4 Q. So that it could stop them before
5 they went out?

6 A. So that they could stop them
7 before they went out?

8 Q. Correct.

9 A. Yeah.

10 Q. Okay. They didn't?

11 A. They didn't what?

12 Q. This is like a Monty Python movie,
13 right? Sometimes. Let me ask the question
14 again.

15 So your testimony is that you
16 don't know whether DDM had the tools necessary
17 to identify suspicious orders and stop them
18 before they went out, right?

19 A. Correct.

20 Q. Okay. So you would also agree
21 that DDM did not identify suspicious orders in a
22 way that would allow them to stop them before
23 they went out, right?

24 MR. JOHNSON: Objection.

1 Q. And I think you said yes?

2 A. Yes.

3 Q. Okay. You would agree that DDM's
4 in the best position to ensure that any
5 suspicious orders placed within its business are
6 reported to the Ohio State Board and the DEA,
7 right?

8 A. Yes.

9 Q. Okay. Do you know what the most
10 dispensed drug was at DDM pharmacies, let's say
11 in 2014?

12 A. Offhand, no.

13 Q. Okay. Do you know what the most
14 dispensed controlled substance was?

15 A. I would -- I would be guessing if
16 I gave you an answer.

17 Q. Okay. Do you have a couple that
18 might be in the running?

19 A. Controlled drugs?

20 Q. Yeah.

21 A. It could have been a
22 codeine-containing cough syrup. Could have been
23 Ambien.

24 Q. Anything else?

1 A. It could have been a family of
2 hydrocodones, you know, as a group.

3 Q. Okay. That would include brand,
4 generic, et cetera? Different --

5 A. Different strengths.

6 Q. -- strengths?

7 A. Different -- yeah.

8 Q. Okay. What percentage of DDM's
9 pharmacy business was controlled versus not
10 controlled in 2014, do you know?

11 A. I don't know.

12 Q. Do you know, was it reflective of
13 the national average; was it higher or lower?

14 A. I can't really answer that.

15 Q. Did you ever do anything to
16 monitor or identify what the most -- or the
17 largest -- strike that.

18 Did you ever do anything to
19 identify or monitor which controlled substance
20 was being prescribed the most frequently and
21 filled in your stores?

22 A. Did we monitor that?

23 Q. Yeah, did you ever do anything to
24 monitor that?

1 A. No.

2 Q. Do you know if anybody else did?

3 A. I don't know that.

4 Q. Do you know whether there were
5 ever any large unexplained increases of, let's
6 say, hydrocodone prescriptions at any time when
7 you were at DDM?

8 A. They showed up on our reports, if
9 there were large increases in orders.

10 Q. Do you know just from a chain wide
11 standpoint, were there ever any large
12 unexplained trends of use of hydrocodone within
13 the DDM system?

14 A. Well, I'm sure we followed the
15 national trend, and the national trend was an
16 increase in hydrocodone use. So we wouldn't be
17 any different than anybody else.

18 Q. But you're just speculating,
19 right? You don't actually know?

20 A. Yes.

21 Q. Okay. Do you know what the most
22 commonly diverted drugs are?

23 A. I would say that Schedule II
24 narcotics.

1 Q. Would that include hydrocodone?

2 A. It does now. It didn't then.

3 Q. Well, you're saying the
4 Schedule II didn't include hydrocodone then?

5 A. Well, no. I mean, I'm not sure of
6 your question. The most highly diverted drugs?

7 Q. Mm-hmm.

8 A. I would have to assume it would be
9 any Schedule II or hydrocodones or IIIs at that
10 particular point.

11 Q. Were you aware of the most highly
12 diverted or most likely to be diverted drugs
13 were when you were working at DDM?

14 A. I knew that hydrocodones were a
15 particular potential problem.

16 Q. And that, in addition to those
17 other two drugs that make up the trilogy; is
18 that right?

19 A. Yes.

20 Q. And that's -- what, benzo is the
21 other one. What's the third one?

22 A. Basically codeine-containing cough
23 syrups, because of cough, cold and flu seasons.
24 I mean, that's a very highly used particular

1 product.

2 Q. So as a pharmacist and the
3 director of pharmacy operations at DDM, you were
4 aware of the types of drugs that were most
5 commonly diverted, correct?

6 A. I would say yes.

7 Q. And did you do anything special to
8 monitor the movement of those drugs within DDM's
9 system, other than what we've talked about today
10 with that 12-month report?

11 A. No.

12 Q. Okay. Did you ever run any
13 reports or look at any trends over time to see
14 how commonly those types of drugs were being
15 filled at DDM stores?

16 A. Did not.

17 Q. Are you aware of anybody that did?

18 A. I'm not aware of that.

19 Q. Is that something you could have
20 done?

21 A. A trend for us? It's possible,
22 yes.

23 Q. Okay. Do you think looking at
24 trends of how hydrocodone was being filled in

1 your stores over time would have been helpful to
2 determine whether your suspicious order
3 monitoring policies and procedures were
4 adequate?

5 A. Well, the problem with that is
6 that if you're getting actual legitimate
7 prescriptions for particular products, you
8 would -- if the trend was upward, then we would
9 actually not look at that because we have
10 legitimate prescriptions that we're filling. So
11 it would determine whether or not you're filling
12 legitimate prescriptions at that point.

13 So if the prescription use was up,
14 then we would assume that the orders were going
15 to be up, and the distribution was up.

16 Q. But we know -- it's common
17 knowledge that there were tons of illegitimate
18 prescriptions that led to this opioid crisis,
19 correct?

20 MR. JOHNSON: Objection.

21 A. Define "illegitimate
22 prescriptions."

23 Q. Prescriptions that were written by
24 pill mills. Prescriptions that were written for

1 larger amounts than necessary. I mean, you're a
2 pharmacist. I mean, you know this information,
3 right?

4 A. Right.

5 Q. Okay. And you'd agree that there
6 are -- that part of the opioid epidemic problem
7 is illegitimate prescriptions, correct?

8 A. It's part of it.

9 Q. Okay. And you, at the corporate
10 level, and as a pharmacist yourself, didn't do
11 anything to identify whether the prescriptions
12 being filled at the store level were legitimate,
13 correct?

14 MR. JOHNSON: Objection.

15 A. You know, that's -- you've got a
16 broad brush there, and you're -- and what we did
17 was make sure that we're not filling scripts
18 that were out of state, that -- and there were
19 actually times when the State Board of Pharmacy
20 would notify us if a particular physician was
21 under investigation. We would send that out to
22 the stores so that they would not fill
23 particular prescriptions for that particular
24 physician. So ...

1 Q. And I'm not trying to put blame on
2 you. What I'm trying to understand is --
3 because I asked you about whether it would be
4 useful to look at the trends of the way -- how
5 hydrocodone increased in usage over time, and
6 you said, well, you know, if they were
7 legitimate, then it wouldn't be useful, right?

8 A. Right.

9 Q. And so my next question was, you
10 knew there were lots of illegitimate ones,
11 right? So presume --

12 A. Healthcare in the world, yes --

13 Q. Right.

14 A. -- in the marketplace. Not
15 necessarily in our stores.

16 Q. Okay. Are you aware of any time
17 ever that there was a prescription that was
18 identified as illegitimate in one of DDM's
19 stores?

20 A. Yes.

21 Q. Okay. So that trend chart that I
22 was asking if you ever looked at, you said no,
23 that would reflect -- generally would include
24 some illegitimate use, correct?

1 A. You're talking about a percentage
2 or some?

3 Q. Just some.

4 A. Any?

5 Q. Yeah.

6 A. Is one some?

7 Q. Well, my point is that you told me
8 that generally that wouldn't be useful if it
9 only contained legitimate prescriptions, right?
10 And my question back to you is, it had to have
11 included some illegitimate prescriptions just by
12 definition, right, based on this crisis?

13 A. What you're doing --

14 MR. JOHNSON: Objection.

15 Go ahead.

16 Q. I don't want to know what I'm
17 doing. I want to know what the answer to my
18 question is, okay? I want an answer to the
19 question.

20 A. You're placing the pharmacist, you
21 know, in the light of determining whether or not
22 a particular physician has the right to write
23 this prescription. I can't determine at that
24 particular point whether a patient standing in

1 front of me and whether they have cancer pain or
2 whether they have back pain or whether they came
3 from, you know -- we know they came from a pill
4 mill because they would be out of state.

5 We didn't know -- recognize any
6 pill mills, or if the State Board did recognize
7 pill mills, they would identify it to us and we
8 would not fill them.

9 So now you're relying -- we relied
10 on our pharmacists to determine what was
11 legitimate and what was not. If the trend -- if
12 the written trend was upwards, okay, we're going
13 to be filling more of those prescriptions. So
14 the trend is going to be up. I don't know why
15 looking at the trend would have an actual effect
16 on what we did as far as distributing that drug.

17 Q. Okay. And so your testimony today
18 is that looking at a trend of the sales of
19 hydrocodone over time would not be useful in any
20 way in identifying suspicious orders or
21 diversion; is that fair?

22 A. I would say yes.

23 Q. Okay. Did you ever look at the
24 greater than six-week average report that was

1 used in the warehouse or at the store level?

2 A. I've seen them.

3 Q. Okay. But it wasn't your practice
4 to look at them or review them?

5 A. No.

6 Q. Okay. Do you know what percentage
7 increase would trigger those?

8 A. I don't know that.

9 Q. Okay. Do you know who designed
10 that report?

11 A. If I had to guess, it might have
12 been P.J., by I'm not quite sure. P.J. Ferut.

13 Q. Okay. Let's look at Exhibit 3.

14 - - -

15 (DDM-Nameth Exhibit 3 marked.)

16 - - -

17 BY MR. MULLIGAN:

18 Q. This is DDM68281, and this is a
19 February 7, 2007, letter from the U.S.
20 Department of Justice Drug Enforcement
21 Administration.

22 Do you see that?

23 A. Yes.

24 Q. Have you ever seen this document

1 before?

2 A. I believe possibly in preparation
3 for this.

4 Q. Okay. Do you know whether you'd
5 ever seen it prior to that?

6 A. Not that I can recall.

7 Q. Okay. Have you ever seen a
8 letter -- would you have seen a letter like this
9 as the director of pharmacy operations at DDM?

10 A. It would have gone to the VP
11 probably.

12 Q. To Pete?

13 A. Most likely.

14 Q. Did he ever share this type of
15 document with you when it came in?

16 A. He could have.

17 Q. Okay. I'll just represent to you
18 that this document discusses just generally the
19 obligations under the Controlled Substances Act.
20 Is that your understanding, having reviewed it
21 in preparation for today?

22 A. Yes.

23 Q. Okay. So if you look at the first
24 sentence, it says, "This letter is being sent to

1 every commercial entity in the United States
2 registered with the DEA."

3 Do you see that?

4 A. Mm-hmm.

5 Q. Okay. And that's registered to
6 distribute controlled substances, correct?

7 A. Yes.

8 Q. Okay. And so this would have gone
9 to DDM, right?

10 A. Yes, it would.

11 Q. Okay. "The purpose of this letter
12 is to reiterate the responsibilities of
13 controlled substance distributors in view of the
14 prescription drug abuse problem our nation
15 currently faces."

16 Do you see that?

17 A. Yes.

18 Q. Were you aware of what DDM's
19 responsibilities were as a distributor at this
20 time in 2007?

21 A. I know that we had to report, I
22 believe at that time, to ARCOS.

23 Q. Okay. So other than reporting
24 transactions to ARCOS, do you know any other

1 obligations that DDM had at that time?

2 A. I'm sure if I read through it, it
3 would, you know, remind me. I didn't read
4 through it, per se.

5 Q. We'll go through it, but you
6 don't -- at this time, you don't recall any
7 other --

8 A. No.

9 Q. Okay. And so it's referencing a
10 prescription drug abuse problem the nation
11 currently faces.

12 Do you see that?

13 A. Yes.

14 Q. Were you aware that the nation
15 faced a prescription drug abuse problem in 2007?

16 A. We were leading -- we were getting
17 concerned at that point, yes.

18 Q. Okay. So the next sentence says,
19 "As each of you is undoubtedly aware, the abuse
20 (nonmedical use) of controlled prescription
21 drugs is a serious and growing health problem in
22 this country."

23 Do you see that?

24 A. Mm-hmm.

1 Q. Were you undoubtedly aware of that
2 in 2007?

3 A. Yes.

4 Q. Okay. And you'd agree that the
5 nonmedical use is another -- it's a synonym for
6 diversion, right, illegitimate use?

7 A. Correct.

8 Q. Okay. All right. If you go down
9 to the next paragraph. "The CSA was designed by
10 Congress to combat diversion by providing for a
11 closed system of drug distribution, in which all
12 legitimate handlers of controlled substances
13 must obtain a DEA registration and, as a
14 condition of maintaining such registration, must
15 take reasonable steps to ensure that their
16 registration is not being utilized as a source
17 of diversion."

18 Do you see that?

19 A. Mm-hmm.

20 Q. Did D- --

21 MR. JOHNSON: Is that a "yes"?

22 A. Yes.

23 Q. Did D -- thank you.

24 Did DDM obtain a DEA registration?

1 A. Yes.

2 Q. And did you understand that as a
3 condition of that, DDM had to take reasonable
4 steps to ensure that it was not being used as a
5 source of diversion?

6 A. Yes.

7 Q. Okay. If you go further down, it
8 says, "If the closed system is to function
9 properly as Congress envisioned,
10 distributors" -- that's DDM, right?

11 A. Yes.

12 Q. -- "must be vigilant in deciding
13 whether a prospective customer can be trusted to
14 deliver controlled substances only for lawful
15 purposes."

16 Do you see that?

17 A. Yes.

18 Q. And in this instance, the customer
19 would be a DDM store, correct?

20 A. Correct.

21 Q. Okay. "This responsibility is
22 critical, as Congress has expressly declared
23 that the illegal distribution of controlled
24 substances has a substantial and detrimental

1 effect on the health and general welfare of the
2 American people."

3 Do you see that?

4 A. Yes.

5 Q. And would you agree with that
6 statement?

7 A. Yes.

8 Q. Okay. And the statement before
9 basically says you've got to know who your
10 customers are, right?

11 A. Reasonable steps.

12 Q. Okay. Well, it says that you must
13 be vigilant in deciding whether a prospective
14 customer or store can be trusted to deliver the
15 controlled substances --

16 A. Right.

17 Q. -- only for lawful purposes,
18 right?

19 A. Correct.

20 Q. Okay. Did you do that?

21 A. I believe to the best of our
22 ability, we did that.

23 Q. Okay. Do you think that DDM could
24 have done a better job at that?

1 A. Well, being a small system and a
2 closed system, we knew that all our stores
3 were -- licenses were in place. We knew the
4 pharmacists were -- had their licenses. So, you
5 know, we knew our customers.

6 Q. Did you know them well enough to
7 know that they weren't diverting drugs?

8 A. We did by looking at the reports
9 that were done on their end and our end as well.

10 Q. But you told me earlier you knew
11 them personally, right?

12 A. We -- the stores did their counts
13 on a monthly -- on a monthly basis. So if there
14 was diversion, that would show up in the monthly
15 drug count. Are you talking about --

16 Q. Hold on. I want you to listen to
17 my question, okay, because my question was very
18 specific.

19 My question was, you knew all the
20 pharmacists by name, right?

21 A. Yes.

22 Q. Personally?

23 A. Yes.

24 Q. Okay. Was that the extent to

1 which you were vigilant in determining whether
2 your stores could be trusted to deliver
3 controlled substances only for a lawful purpose,
4 the fact that you knew them personally?

5 A. No. Knowing them personally and
6 knowing that they have -- they have -- their
7 licenses are active and there are not -- there
8 are no -- just knowing a person is one thing,
9 but knowing that their licenses are in place to
10 send them the controlled substances, that's
11 part -- you know, you have -- you know your
12 customers.

13 If I didn't know my customer, if I
14 was a mail order distributor or something to
15 that nature, I'm sending them to somebody else
16 in another part of the country, they could take
17 a photocopy of their DEA license and send it to
18 me. I wouldn't exactly know whether it was
19 legitimate or not.

20 But when we're dealing with a
21 closed system, we're kind of responsible for
22 having their licenses in place and the
23 pharmacists have an active license.

24 Q. So is knowing your customer, does

1 that just mean knowing that they have a license
2 in place?

3 A. Not -- that's part and parcel.

4 Q. Is there anything else?

5 A. Knowing that they don't have a
6 background against -- marks with -- against the
7 State Board.

8 Q. Knowing there's no diversion
9 taking place at their store, there's never been
10 one, would that be included?

11 A. Possibly.

12 Q. So knowing whether diversion had
13 occurred at a store under a pharmacist's watch
14 would not necessarily be part of knowing your
15 customer? I just want to make sure -- I'm
16 trying to understand.

17 A. I don't think the pharmacist, as
18 far as in that aspect, has that much to do with
19 it. As far as knowing that there's no diversion
20 under that particular pharmacist, that really
21 doesn't have much to do with sending them the
22 drug or not.

23 Q. So I'm just trying to understand
24 what you did -- I'm looking at this letter,

1 right -- to be vigilant in deciding whether a
2 prospective customer can be trusted to deliver
3 controlled substances.

4 And what you've told me is, one,
5 we know you know them personally, right? That's
6 one. And two, you knew that their licenses were
7 in place, right?

8 So I want to know, was there
9 anything else that you did to be vigilant to
10 determine whether your stores were participating
11 in diversion or not.

12 A. I'm reading it here to -- we're
13 relying on our pharmacists at that particular
14 point.

15 Q. Okay. But if you read this, it
16 says that "Distributors must be vigilant,"
17 right?

18 And so in deciding whether a
19 prospective customer -- which would be your
20 store, right? And that's also your pharmacist,
21 right?

22 A. Correct.

23 Q. So it sounds like you guys didn't
24 do this; is that fair?

1 A. No.

2 MR. JOHNSON: Objection.

3 Q. Well, you just told me that your
4 vigilance was relying on your pharmacist, right?
5 But your pharmacist is your customer, right?

6 A. Stores, yeah.

7 Q. Yeah.

8 A. Not necessarily just the
9 pharmacist.

10 Q. So your --

11 A. It's the store.

12 Q. So your vigilance in deciding
13 whether a prospective customer can be trusted
14 was just to trust them; is that fair?

15 A. I don't know if I would go that
16 far.

17 Q. Okay. Well, clarify it for me.

18 A. I think the pharmacists can be
19 trusted because they -- they, at that particular
20 point, are deemed to be following the State
21 Board of Pharmacy rules.

22 Q. All right. I'm going to keep
23 asking you this question until we get to the
24 right answer, honestly.

1 This says, right, "DDM
2 distributors must be vigilant in deciding
3 whether a prospective customer" -- which is the
4 store or a pharmacist -- "can be trusted."

5 And I'm asking you what you did,
6 other than just blindly trusting them, to
7 determine whether they could be trusted.

8 A. Well, we didn't blindly trust
9 them. I mean, if I know a pharmacist for -- we
10 had a long-standing history of having
11 pharmacists under our control for numbers of
12 years. We did not have a high turnover. We
13 knew our people in the stores.

14 So a trust is determined over a
15 segment of time with that person. So obviously
16 if you're looking at -- things were in place as
17 far as licensures was correct. That was one
18 aspect of it. But the other aspect of it is
19 to -- we're not sending it to someone we don't
20 know.

21 Q. Okay. So the two prongs of your
22 discharging your duty to be vigilant is: One,
23 the pharmacist has a license of his own or her
24 own; and two, you know them personally, right?

1 A. Correct.

2 Q. Okay. Okay. If you go to the
3 next page, page 2, second paragraph, second
4 sentence, it says, "Moreover, all registrants -
5 manufacturers, distributors, pharmacies, and
6 practitioners - share responsibility for
7 maintaining appropriate safeguards against
8 diversion."

9 Do you see that?

10 A. Mm-hmm.

11 Q. And so you'd agree that that means
12 that DDM and its pharmacies have a corresponding
13 responsibility to protect against diversion,
14 right?

15 A. Yes.

16 Q. Okay. And it says, "Nonetheless,
17 given the extent of prescription drug abuse in
18 the United States, along with the dangerous and
19 potentially lethal consequences of such abuse,
20 even just one distributor that uses its DEA
21 registration to facilitate diversion can cause
22 enormous harm."

23 Do you see that?

24 A. Mm-hmm.

1 Q. Would you agree with that?

2 A. Yes.

3 Q. Okay. If you go to the next
4 paragraph. This is referencing a federal
5 statute. Are you familiar with that statute,
6 21 U.S.C. 823(e)?

7 A. I'd have to review it.

8 Q. Okay. It says -- and it talks
9 about it here a little bit. It says listed
10 among the factors on that statute is "the duty
11 of a distributor to maintain effective controls
12 against diversion of controlled substances into
13 other than legitimate medical, scientific, and
14 industrial channels."

15 Do you see that?

16 A. Mm-hmm, yes.

17 Q. And that's what we've been talking
18 about today, right?

19 A. Yes.

20 Q. Okay. And down below it says,
21 "The DEA regulations require all
22 distributors" -- and that's DDM, right?

23 A. Yes.

24 Q. -- "to report suspicious orders of

1 controlled substances."

2 Do you see that?

3 A. Yes.

4 Q. And the regulations state in

5 21 C.F.R. 1301.74(b) the following --

6 A. Where are you?

7 MR. JOHNSON: Where are you right

8 now?

9 A. I think I lost you.

10 MR. JOHNSON: It's not up on the

11 screen.

12 MR. MULLIGAN: Yeah. We're good

13 now. Do you guys see that now?

14 BY MR. MULLIGAN:

15 Q. So I'm looking at the indented

16 paragraph, okay?

17 A. Go ahead and start.

18 Q. It says, "The registrant shall

19 design and operate a system to disclose to the

20 registrant suspicious orders of controlled

21 substances."

22 Do you see that?

23 A. Yes.

24 Q. And so -- and that's -- the system

1 that DDM designed is the one that we've talked
2 about today, right?

3 A. Yes.

4 Q. It says, "The registrant" -- which
5 is DDM -- "shall inform the Field Division
6 Office of the Administration in his area of
7 suspicious orders when discovered by the
8 registrant."

9 Do you see that?

10 A. Yes.

11 Q. And you'd agree that that means
12 that as soon as a suspicious order is
13 identified, it must be reported immediately,
14 right?

15 MR. JOHNSON: Objection.

16 A. Yes.

17 Q. Okay. It doesn't say within a
18 week, right?

19 A. Right.

20 Q. And it doesn't say within a month,
21 right?

22 A. Right.

23 Q. And it doesn't say after you've
24 done your due diligence, right?

1 A. Correct.

2 Q. It just says when it's identified,
3 right?

4 A. Yes.

5 Q. Okay. "Suspicious orders include
6 orders of unusual size, orders deviating
7 substantially from a normal pattern, and orders
8 of unusual frequency."

9 Do you see that?

10 A. Yes.

11 Q. So here the C.F.R. is actually
12 defining the word "suspicious order," isn't it?

13 A. It says what it includes. It's
14 not inclusive, but --

15 Q. Right. It's not -- it's not an
16 exhaustive list --

17 A. Right.

18 Q. -- but it tells you what is a
19 suspicious order under the regulations, right?
20 And that would include an order of unusual size,
21 right?

22 A. It includes orders of unusual
23 size.

24 Q. Okay. And would you agree that

1 any order that shows up on your 12-month report
2 or your monthly -- 12-month average report would
3 reflect orders of unusual size by definition?

4 A. By definition, yes.

5 Q. Okay. And a suspicious order also
6 includes orders deviating substantially from a
7 normal pattern, correct?

8 A. Yes.

9 Q. And by definition, your report
10 would also include orders deviating
11 substantially from a normal pattern, right?

12 A. Yes.

13 Q. Okay. And the last thing is
14 "orders of unusual frequency."

15 Do you see that?

16 A. Yes.

17 Q. Okay. So this definition of
18 suspicious order would seem to include anything
19 that would show up on your 12-month average
20 report, correct?

21 A. Depends on what they're stating is
22 unusual size.

23 Q. Well, I mean --

24 A. I mean, if on our report we look

1 at it, and if we could answer the reason why,
2 then, you know, we could justify the order.

3 Q. Okay. But this -- the sentence
4 above it says that you "shall inform the DEA of
5 suspicious orders when discovered," right? And
6 it doesn't say after doing due diligence, does
7 it?

8 MR. JOHNSON: Objection.

9 Q. So you're getting -- is that
10 right?

11 A. It doesn't say when.

12 Q. It says you have to -- well, it
13 says, "The registrant shall inform the Field
14 Division Office of the Administration in his
15 area of suspicious orders when discovered."

16 A. Right.

17 Q. Okay. So you're saying that you
18 didn't discover a suspicious order when you
19 looked at the report; it was only after you did
20 due diligence?

21 A. Correct.

22 Q. Okay. But you don't see that
23 leeway in this text here, do you?

24 A. I'm looking at it. And when it

1 says -- are you pointing specifically to orders
2 of unusual size, that particular aspect of it?
3 We never identified suspicious orders, so ...

4 Q. Did you ever have an order of
5 unusual size?

6 A. Yes.

7 Q. Okay. Did you ever report those
8 orders?

9 A. Not after we reviewed them, no.

10 Q. The answer to that question is you
11 never reported them, right?

12 A. We never reported a suspicious
13 order.

14 Q. Okay. So DDM had unusual --
15 orders of unusual size, right?

16 A. In this definition, it doesn't say
17 what unusual size is. Is unusual size 100
18 bottles in their definition or not? I mean,
19 that's very -- you know, you can determine
20 however you want the number on that. So ...

21 Q. But DDM defined unusual size to
22 orders on its own with its report that you
23 reviewed, didn't it?

24 A. We looked at higher than normal

1 orders.

2 Q. Okay. That's -- is that
3 substantially different than an unusually sized
4 order?

5 A. That's an interpretation.

6 Q. I mean, if a pharmacy is ordering
7 ten bottles a month over 12 months and then they
8 order twenty, that's unusual isn't it?

9 A. Can be.

10 Q. That's the whole point of the
11 rolling average, right?

12 A. Can be.

13 Q. Okay. So DDM defined what an
14 order of unusual size was through its report,
15 right? And that was a report that you guys
16 designed to identify suspicious orders, right?

17 A. Could be.

18 Q. Okay. Well, did it or not?

19 A. Again, I -- you know, according to
20 this, that was our -- our report listed anything
21 over 99 percent. I don't know what this unusual
22 size means. Does it determine -- why didn't
23 they tell me in the -- in this, why didn't they
24 say -- give me a percentage and something

1 concrete to work with.

2 Q. All right. Sir, I'm asking you
3 very specific questions and I'm happy to talk
4 about this paragraph for the rest of the day if
5 you want. But if you can listen to my questions
6 and answer them, we'll be able to get through my
7 remaining stack of documents a lot faster.

8 Okay. So I --

9 MR. JOHNSON: Objection.

10 Q. Would you agree with me that the
11 DEA is saying that a suspicious order is one
12 that includes orders of unusual size. Would you
13 agree with that?

14 A. That's what it says.

15 Q. Okay. And would you agree that
16 your rolling 12-month report showed orders of
17 unusual size by definition?

18 A. I can't agree to that.

19 Q. You don't agree? So they were
20 normal? There was nothing abnormal about those
21 orders?

22 A. No. They were -- they could have
23 been larger than normal, but what's unusual --
24 it's not unusual to me once I find out the

1 reasoning.

2 Q. Okay. So therein lies what we
3 talked about earlier, which is DDM's suspicious
4 order monitoring policies turned on your
5 subjective belief about what was unusual and
6 what wasn't; is that fair?

7 A. Possibly.

8 Q. DDM didn't define unusual --
9 orders of unusual size?

10 A. Well, they did when they said
11 99 percent.

12 Q. Exactly. So anything that showed
13 up on that report was an order of unusual size,
14 right?

15 A. In DDM's mind but not necessarily
16 in the DEA's mind.

17 Q. Okay. But in DDM's mind, DDM had
18 orders of unusual size, correct?

19 A. Yes.

20 Q. Okay. And this says a suspicious
21 order is one that is an order of unusual size,
22 correct?

23 A. In -- in --

24 Q. Right?

1 A. That's what it says.

2 Q. Okay. And DDM had orders of
3 unusual size and you knew about them when you
4 saw them, right?

5 We're almost there.

6 A. It was only unusual if we didn't
7 have an answer for it.

8 Q. Okay. I'll go around this
9 merry-go-round with you all day.

10 All right. You've agreed with me
11 that DDM had orders of unusual size and they
12 showed up on your 12-month rolling report,
13 right?

14 A. Yes.

15 Q. Okay. And you saw those, right?

16 A. Mm-hmm.

17 Q. And you didn't report them, right?

18 A. Right.

19 Q. Okay. What would have been the
20 harm in reporting those orders?

21 A. Well, in our opinion, that --
22 there's no sense of calling the DEA in when
23 there was no necessary need to.

24 Q. But that would have been the safe

1 route to go, wouldn't it?

2 A. I don't think -- would DEA have
3 all the manpower to do all that?

4 Q. That's not your problem, though --

5 A. I mean I don't know.

6 Q. -- is it?

7 A. No, but there's no sense of
8 instigating a situation when you didn't have to.

9 Q. But if you were going to be extra
10 safe, if you were going to dot all your Is and
11 cross all your Ts, wouldn't it have been easy to
12 just submit the orders that showed up on that
13 report to the DEA and just --

14 A. Easy for me, but why should I make
15 it easy for me. You know, I -- my job is to
16 determine whether or not that order is
17 legitimate or not, okay? And so I'm taking the
18 stance that I'm going to do the legwork and not
19 throw it at the DEA without even looking at it.
20 That, to me, doesn't do service to the DEA.

21 Q. Sir, as a pharmacist, you were not
22 given the subjective ability to decide what was
23 suspicious or not under the regulations,
24 wouldn't you agree?

1 MR. JOHNSON: Objection.

2 A. Yes.

3 Q. Okay. So this is a pretty hard
4 and fast requirement to identify and report
5 suspicious orders, isn't it?

6 MR. JOHNSON: Objection.

7 A. It doesn't specify specifics.

8 Q. Okay. We've been down that road,
9 so I'm not going to go down that road again.

10 But it would have been easy for
11 you to just take your report that you got every
12 month and just send it on to the DEA, right?

13 A. I could have, but I don't think
14 that would be -- it would be unverifiable
15 numbers.

16 Q. Okay. But you didn't do that,
17 right?

18 A. No.

19 Q. Okay. The next paragraph says,
20 "It bears emphasis that the foregoing reporting
21 requirement is in addition to, and not in lieu
22 of, the general requirement under 21 U.S.C.
23 823(e) that a distributor maintain effective
24 controls against diversion."

1 Right?

2 A. Mm-hmm.

3 Q. As we talked about before, there
4 was nothing that DDM did to prevent diversion in
5 advance; it only identified it after the fact,
6 correct?

7 MR. JOHNSON: Objection.

8 A. We did things prior to with the
9 rolling six-week average.

10 Q. Okay. But that would have been
11 Jill's province, right?

12 A. Well, not necessarily just Jill.
13 If she would have -- if she reviewed it, but she
14 could have brought it further up to someone else
15 if she had any questions.

16 Q. Okay. You didn't oversee your
17 own -- any controls that prevented against
18 diversion in advance, right?

19 A. No.

20 Q. Okay. And so if we were going
21 to -- the only controls that could have
22 prevented against diversion would be under Jill,
23 and we would need to talk to Jill about that,
24 right?

1 A. Yes.

2 Q. Okay. All right. The next
3 sentence or the next paragraph says, "In
4 addition to reporting all suspicious orders, a
5 distributor has a statutory responsibility to
6 exercise due diligence to avoid filling
7 suspicious orders that might be diverted into
8 other than legitimate medical, scientific, and
9 industrial channels."

10 Do you see that?

11 A. Yes.

12 Q. And that was discharged through
13 whatever Jill did with that six-week report,
14 right? Is that your understanding?

15 A. Part of it.

16 Q. Is that your understanding?

17 A. That's part of what --

18 Q. What else did it do?

19 A. As far as -- are you talking about
20 Jill's order?

21 Q. I just want to know what DDM did
22 to discharge its statutory responsibility to
23 avoid filling suspicious orders that might be
24 diverted. That's in advance.

1 A. In this particular case, they're
2 referring to illegitimate prescriptions. It
3 states "illegitimate medical, scientific, and
4 industrial channels." We knew our customers at
5 that point. So we knew that the channels were
6 regulated. And we're relying on our pharmacists
7 to fill legitimate prescriptions.

8 Q. Okay. Well, in fairness, I
9 appreciate that. That's not what it says. It
10 actually says, "A distributor has a statutory
11 responsibility to exercise due diligence to
12 avoid filling suspicious orders that might be
13 diverted."

14 Do you see that?

15 A. Yes.

16 Q. So that's not talking about the
17 stores. That's talking about the DDM warehouse
18 distribution facility, right?

19 A. Correct.

20 Q. Okay. What did DDM do to
21 discharge that responsibility at the
22 distribution level?

23 A. We -- we reviewed our 12-week
24 orders and followed up on suspicious -- possible

1 suspicious orders sent out to the stores. And
2 they reviewed them and answered back our
3 questionnaires.

4 Q. So who's "we"?

5 A. Pharmacy operations.

6 Q. And who's that?

7 A. Myself or Pete.

8 Q. Okay. So you reviewed a 12-week
9 report? What's that?

10 A. The 12 -- I'm sorry. The 12-month
11 report.

12 Q. Okay. So you reviewed the
13 12-month rolling report. And -- so that's what
14 we already talked about, right?

15 A. Yes.

16 Q. Okay. But that didn't help DDM
17 avoid filling suspicious orders, did it?

18 A. That is what our pharmacists are
19 licensed to do, the filling suspicious orders,
20 and then we would also have our supervisors go
21 in and review prescriptions that they might --
22 to make sure that they -- you know, we're not
23 going into diversion.

24 I also sent e-mails and

1 notifications to our stores about not filling
2 legitimate prescriptions.

3 Q. Okay. And so you're saying
4 prescriptions, you're talking about pharmacists
5 again. But we're talking about the distributor
6 and orders.

7 A. Okay.

8 Q. Orders are things that are placed
9 by the store to the distribution center,
10 correct?

11 A. Yes.

12 Q. Okay. So other than looking at
13 your 12-month rolling report, DDM didn't do
14 anything else --

15 A. No.

16 Q. -- to avoid filling suspicious
17 orders, right?

18 A. Correct.

19 Q. Okay. And had you had your report
20 populate when the order was placed, as we talked
21 about hypothetically before, you actually would
22 have complied with that obligation, wouldn't
23 you?

24 A. Possibly.

1 Q. What do you mean by "possibly"?

2 A. Your point is that prospectively
3 we should have been stopping orders, and we were
4 doing it after the fact, right?

5 Q. Mm-hmm.

6 A. So in this instance, you're saying
7 they have -- we have -- the distributor has a
8 statutory responsibility to avoid filling
9 suspicious orders. We felt that we were
10 accomplishing our goal by doing that by looking
11 at our 12-month order and sending it to -- the
12 response to the stores.

13 Q. But that wasn't narrowly tailored
14 to stop suspicious orders from being filled when
15 they happened, right? It was after the fact?

16 A. Right.

17 Q. My question to you was, if that
18 report had been changed so that you would get it
19 when the order was placed, you actually could
20 have possibly put measures in place to avoid
21 filling suspicious orders, correct?

22 A. I think that the system we did
23 have worked for us and --

24 Q. That's not what I asked. That's

1 not an answer to the question I asked.

2 And, again, we can be here all
3 day, but if you listen to the question I'm
4 asking you, I'm trying to ask you narrowly
5 tailored questions so that the answer is
6 relatively easy. All right. Let me start
7 again.

8 My question is, if the 12-month
9 average report had been changed so you would get
10 it when the order pushing the store over the
11 limit was placed, you could have actually put
12 measures in place to avoid filling suspicious
13 orders in advance, right?

14 A. What that would do would -- we
15 would do our due diligence after looking at that
16 report. We would still do the same due
17 diligence. So you're saying -- if you look at
18 what Cardinal or any other wholesaler was doing,
19 they did it prospectively, correct?

20 Q. I don't know.

21 A. But they also said, "Notify us if
22 there's any change in the way your orders were
23 needed. In other words, if you had a clinic
24 move in or if there was a reason -- give us a

1 reason why we should change that number."

2 What we were doing was looking at
3 the number and then verifying the reason why the
4 order was placed. So ...

5 Q. My question's really specific,
6 okay? And I -- that -- again, I don't think
7 you're answering my question. I understand what
8 you're doing, but I -- if you read the sentence,
9 okay, let's just break it down.

10 "A distributor has a statutory
11 responsibility." That means federal law
12 requires DDM to exercise due diligence, right?

13 A. Mm-hmm.

14 Q. To avoid filling, right? That's
15 prospective, isn't it?

16 A. Yes.

17 Q. That means to identify a
18 suspicious order and to not fill it before it
19 leaves the distribution facility, correct?

20 A. Yes.

21 Q. Okay. And I just want to be
22 clear. The question I'm asking you is, if your
23 12-month rolling report, which was
24 retrospective, had been generated when that

1 offending order was placed, you could have
2 complied with that, right?

3 MR. JOHNSON: Objection.

4 A. Yes.

5 Q. Okay. But you didn't do that,
6 right?

7 MR. JOHNSON: Objection.

8 Q. Right?

9 MR. JOHNSON: Objection.

10 A. We didn't do that because there
11 was no need.

12 Q. Well, I didn't ask you why you
13 didn't do it. I just asked you whether you
14 did -- I asked you if you didn't do it.

15 You did not do that, right?

16 A. Correct.

17 Q. Okay. Okay. If you look at the
18 next paragraph. It says, "In a similar vein,
19 given the requirement under section 823(e)" --
20 which we've been talking about -- "that a
21 distributor" -- which is DDM -- "maintain
22 effective controls against diversion, a
23 distributor may not simply rely on the fact that
24 the person placing the suspicious order is a DEA

1 registrant."

2 Do you see that?

3 A. Yes.

4 Q. So that's saying that in addition
5 to preventing suspicious orders from leaving the
6 facility, DDM can't just rely on the fact that
7 its pharmacists are ordering the drugs, right?

8 A. That's what it states, yes.

9 Q. Okay. Are you familiar with that
10 under -- are you familiar with that requirement?

11 A. I'm reading it.

12 Q. So is this the first time you've
13 learned that DDM can't just rely on its
14 pharmacists?

15 MR. JOHNSON: Objection.

16 A. What it's stating is that they --
17 we have -- the distributor may not simply rely
18 on the fact that the person placing a suspicious
19 order is a DEA registrant. What they're -- what
20 they're implying is that you should know your
21 customer, which, you know --

22 Q. That --

23 A. -- we're still within our closed
24 system.

1 Q. I'm not asking you what this is
2 implying. I'm asking you what it says. And
3 what it says is that DDM cannot rely on the fact
4 that the person placing the suspicious order is
5 one of its pharmacists.

6 MR. JOHNSON: Objection.

7 Q. Right?

8 MR. JOHNSON: That's not what it
9 says.

10 Q. Right. Well, are your pharmacists
11 DEA registrants? I'm filling in the blank.

12 A. The pharmacies are. Not the
13 pharmacists.

14 Q. So the pharmacist isn't a DEA
15 registrant?

16 A. Correct.

17 Q. But the pharmacy is operated by
18 the pharmacists, right?

19 A. Well, the pharmacy is really
20 operated by Discount Drug Mart.

21 Q. Okay. Which is run by its
22 employees, right?

23 MR. JOHNSON: Objection.

24 A. No. The pharmacies -- pharmacists

1 work for Discount Drug Mart. Discount Drug Mart
2 has to make sure that the DEA registrant is who
3 they say they are.

4 Q. So who runs Store 33's pharmacy?

5 A. The pharmacist runs the pharmacy
6 but the pharmacy --

7 Q. Okay. That's all I've asked. The
8 pharmacist runs --

9 MR. JOHNSON: He gets to finish
10 his answer, doesn't he?

11 MR. MULLIGAN: He does, but we're
12 going to -- we are -- I mean, we're
13 going to be out of here tomorrow, Tim,
14 at this rate. So like --

15 MR. JOHNSON: We'll see about
16 that, but ...

17 MR. MULLIGAN: Okay.

18 BY MR. MULLIGAN:

19 Q. The pharmacist runs the pharmacy,
20 right?

21 A. And the pharmacy is run by the
22 corporation.

23 Q. Okay. Is the pharmacist
24 registered with the DEA?

1 A. The pharmacist is not registered
2 with the DEA.

3 Q. Okay. So as a pharmacist, you
4 have no DEA registration process you have to go
5 through?

6 A. I don't have -- I've never had a
7 DEA registration myself personally.

8 Q. Okay. So --

9 A. The store does.

10 Q. So the store is the DEA
11 registrant?

12 A. Right.

13 Q. Okay. So DDM, distributor, can't
14 rely on the fact that the order is being placed
15 by a DDM store as a way of discharging its
16 obligations under the Controlled Substances Act,
17 correct? That's what that says?

18 A. It says it can -- it can't simply
19 rely on the fact that the person placing the
20 suspicious order is a DEA registrant.

21 Q. Right. So you can't rely on the
22 fact that you know your stores as the basis or
23 as a way of discharging your obligations under
24 the act, right?

1 MR. JOHNSON: Objection.

2 A. It's different when the store --
3 when the warehouse is submitting it to their own
4 store.

5 Q. What does that mean?

6 A. That means that we're not simply
7 relying on the person placing the order. We
8 know that the store has its license in place.

9 Q. So you're relying on the fact that
10 the order is being placed by your store, right?

11 A. The person -- the store is
12 requesting those drugs sent under the auspices
13 of that DEA registration, and that DEA
14 registration is under the Discount Drug Mart
15 corporate entity.

16 Q. And you're relying on the fact
17 that they're a DEA registrant when you're
18 shipping them orders, right?

19 A. Yes.

20 Q. All right. If you go to the last
21 sentence of that paragraph, I'm just going to
22 read the second clause, it says, "The
23 distributor" -- which is DDM -- "should exercise
24 due care in confirming the legitimacy of all

1 orders prior to filling."

2 Right? And you guys didn't do
3 that, did you?

4 MR. JOHNSON: Objection.

5 A. We knew the legitimacy of the
6 orders.

7 Q. But you didn't do any due
8 diligence. You just assumed they were
9 legitimate, didn't you?

10 MR. JOHNSON: Objection.

11 A. We did our due diligence, and we
12 knew that they were legitimate orders.

13 Q. What due diligence did you do to
14 confirm that all orders were legitimate prior to
15 being filled?

16 MR. JOHNSON: "You" being him or
17 DDM?

18 MR. MULLIGAN: DDM.

19 BY MR. MULLIGAN:

20 Q. That you know of.

21 A. We knew that their DEA licenses
22 were in place.

23 Q. Okay. And to go back to the
24 sentence before, it says, "A distributor may not

1 simply rely on the fact that the person placing
2 the suspicious order is a DEA registrant."

3 Right?

4 A. Right.

5 Q. So you can't rely on that. That's
6 all you did, right?

7 MR. JOHNSON: Objection.

8 A. Well, I wouldn't say that's all we
9 did.

10 Q. Tell me what you did. What due
11 diligence did DDM do to confirm the legitimacy
12 of all orders prior to filling them, other than
13 relying on the fact that they were ordered by a
14 store that had a DEA registration?

15 A. We knew our stores. Because it
16 was in a closed system, they were our stores.
17 They were not shipping it to someone we had no
18 idea who they were. So ...

19 Q. So just knowing where your stores
20 are located and who works there is your due
21 diligence; is that right?

22 A. We confirmed the legitimacy of the
23 orders to our best of our ability.

24 Q. Okay. And how did you do that?

1 A. Well, we knew --

2 Q. Prior to -- hold on. Prior to
3 them being filled?

4 A. Yes. We knew who was ordering
5 them.

6 Q. Okay. So, again, it's just based
7 on the fact that you know the people at the
8 store and that they have a registration, right?
9 That's all --

10 A. They were our stores.

11 Q. That's all that was done, right?

12 A. Yes.

13 Q. Okay. All right. Let's go to the
14 next page. It says, "Circumstances that might
15 be indicative of diversion."

16 Do you see that?

17 A. Mm-hmm.

18 Q. And then it says, "DEA
19 investigations revealed that certain pharmacies
20 engaged in dispensing controlled substances for
21 other than a legitimate medical purpose often
22 display one or more of the following
23 characteristics in their pattern of ordering."

24 Do you see that?

1 A. Yes.

2 Q. And there's four items listed
3 there, right?

4 A. Mm-hmm.

5 Q. Are you familiar with these
6 factors or characteristics of a pharmacy
7 engaging in diversion?

8 A. Not specifically.

9 Q. Okay. Have you ever seen these
10 before?

11 A. Not that I recall.

12 Q. Okay. Do you think it would have
13 been important for you as the director of
14 pharmacy operations to be familiar with these
15 characteristics while you were operating DDM's
16 suspicious order monitoring policies?

17 A. Yes, but I think it was reviewed
18 by our VP.

19 Q. Okay. So -- but you didn't know
20 about it, right?

21 A. We knew -- we talked about
22 excessive quantities. I mean, I'd have to
23 review all these in order to give you a specific
24 answer.

1 MR. JOHNSON: Why don't you give
2 him a chance to read them.

3 MR. MULLIGAN: I'm just asking --

4 A. Are you going to highlight all of
5 the --

6 BY MR. MULLIGAN:

7 Q. Let me ask -- I'll just ask some
8 targeted questions, and if you need to read more
9 at that point then y'all -- you go ahead and do
10 that, okay?

11 So the first one is "ordering
12 excessive quantities of a limited variety of
13 controlled substances," right?

14 A. Yes.

15 Q. So that would be a factor that the
16 DEA has identified as a red flag for a pharmacy
17 engaging in diversion, right?

18 A. Yes.

19 Q. Okay. And there's obviously
20 others here. If you look at the next paragraph,
21 it says, "A distributor seeking to determine
22 whether a suspicious order is indicative of
23 diversion of controlled substances to other than
24 legitimate medical channels may wish to inquire

1 with the ordering pharmacy about the following."

2 Do you see that?

3 A. Yes.

4 Q. Are you familiar with these ten
5 issues?

6 A. I'd have to read them.

7 Q. Okay. Why don't you go ahead and
8 do that.

9 MR. MULLIGAN: Why don't we go off
10 the record while he reads that.

11 MR. JOHNSON: You know, it's noon.

12 MR. MULLIGAN: Okay. I want --
13 I'm finishing -- I have, frankly, this
14 one and one more that I want to finish
15 before we take a lunch break.

16 THE VIDEOGRAPHER: We're going off
17 the record at 12:03.

18 (Pause in proceedings.)

19 THE VIDEOGRAPHER: We're back on
20 the record at 12:05.

21 BY MR. MULLIGAN:

22 Q. All right. So we just went off
23 the record quickly so you could read these
24 factors that we were looking at on Exhibit 3,

1 correct?

2 A. Yes.

3 Q. Did you have a chance to review
4 those?

5 A. Yes.

6 Q. Did you defer to the pharmacist to
7 identify these types of issues within the actual
8 pharmacy level?

9 A. Some of them, yes.

10 Q. Were there any that you
11 specifically inquired with the ordering pharmacy
12 about regarding a suspicious order?

13 A. We would send notices out to the
14 stores to notify practitioners that were out of
15 state or out of the area, so -- to make sure
16 that our pharmacies were complying. We had no
17 Internet affiliation at that particular time,
18 nor we do today.

19 Q. Did you ever inquire about what
20 percentage of the pharmacy's business does
21 dispensing controlled substances constitute?

22 A. Not to my knowledge.

23 Q. Okay. What about 5, does the
24 pharmacy -- did you ever inquire whether the

1 pharmacy filled prescriptions issued by
2 practitioners based solely on an online
3 questionnaire without a medical examination or
4 bona fide doctor/patient relationship?

5 A. I didn't ask -- we didn't
6 specifically ask that question.

7 Q. Okay. What about 7, "Are one or
8 more practitioners writing a disproportionate
9 share of the prescriptions for controlled
10 substances being filled by the pharmacy?"

11 A. That was identified by the State
12 Board of Pharmacy and we would rely on them to
13 notify us which practitioners in an area, that
14 they were under investigation.

15 Q. All right. We're done with 3.
16 I'm going to hand you Exhibit 4.

17 MR. MULLIGAN: And then maybe what
18 we do is we take a lunch break after
19 this next exhibit --

20 MR. JOHNSON: Sure.

21 MR. MULLIGAN: -- if it's okay?

22 MR. JOHNSON: Yeah.

23 MR. MULLIGAN: I'm just trying to
24 keep things moving. That's all.

1 MR. JOHNSON: Sure.

2 - - -

3 (DDM-Nameth Exhibit 4 marked.)

4 - - -

5 BY MR. MULLIGAN:

6 Q. This next document is DDM68279.

7 It's another letter. This one is dated

8 December 27, 2007.

9 MR. JOHNSON: I'm thrilled to see
10 it.

11 MR. MULLIGAN: I figured you would
12 be.

13 BY MR. MULLIGAN:

14 Q. And again, this one is -- if you
15 look at the first paragraph, it's sent to every
16 entity in the United States registered with the
17 DEA to manufacture and distribute controlled
18 substances, right?

19 A. Yes.

20 Q. So DDM would have been included in
21 this, correct?

22 A. Yes.

23 Q. All right. And then the second
24 paragraph says, "In addition to, and not in lieu

1 of, the general requirement under 21 U.S.C. 823,
2 that manufacturers and distributors maintain
3 effective controls against diversion, DEA
4 regulations require all manufacturers and
5 distributors to report suspicious orders of
6 controlled substances."

7 Do you see that?

8 A. Yes.

9 Q. And that's your understanding,
10 right?

11 A. Yes.

12 Q. Okay. So you find a suspicious
13 order. You've got to report it, right?

14 A. Yes.

15 Q. Okay. If you go down to the third
16 paragraph, it says, "The regulation also
17 requires that the registrant inform the local
18 DEA Division Office of suspicious orders when
19 discovered by the registrant."

20 Right?

21 A. Yes.

22 Q. And we saw that on the last
23 letter, didn't we?

24 A. Yes.

1 Q. Okay. So they're reiterating all
2 these requirements in another letter to DDM,
3 correct?

4 A. Yes.

5 Q. All right. And the next sentence
6 says, "Filing a monthly report of completed
7 transactions (e.g., excessive purchase report or
8 high unit purchases) does not meet the
9 regulatory requirement to report suspicious
10 orders."

11 Do you see that?

12 A. Yes.

13 Q. And so basically what that's
14 saying is, even if you had submitted your
15 12-month rolling average report, even that
16 wouldn't have met the statutory requirements to
17 report suspicious orders, correct?

18 A. Well, we were not just doing a
19 monthly report. We were doing a monthly report
20 based on something else. If they were -- if we
21 were just only doing a monthly report, I -- is
22 that what they're referring to? It looks like
23 it, but ...

24 Q. My question -- I get what you're

1 doing. My question is very -- let me ask it
2 again because maybe I didn't ask it well.

3 So this says filing a monthly
4 report with the DEA, which includes high unit
5 purchases, which would be kind of like your
6 12-month rolling average report, right?

7 A. Part of it.

8 Q. Okay. But this is saying that
9 even if you had submitted that report to the
10 DEA, that wouldn't be enough to meet the
11 regulatory requirement for reporting suspicious
12 orders, correct?

13 A. But we were doing more than just
14 doing a monthly report.

15 Q. The word "but" is not an answer to
16 a question. All right.

17 A. Well, I can't -- I can't say --
18 you can't agree to what they're saying, a
19 monthly report. We were not -- we were doing
20 more than just a monthly report. It was a
21 monthly report based on a yearly average.

22 Q. And I didn't ask you any of that.
23 Okay? I asked you -- having read this sentence,
24 which we've done now three times. I asked you

1 if this says that if you had taken your rolling
2 12-month average report and sent that to the
3 DEA, that even that wouldn't have been enough to
4 discharge your reporting obligations, correct?

5 A. That's not correct, because that's
6 specifically stating just a monthly report.
7 That's what it says.

8 Q. Your answer doesn't make any
9 sense, okay?

10 MR. JOHNSON: Objection.

11 Q. I'm asking you --

12 MR. JOHNSON: It makes sense to
13 me.

14 MR. MULLIGAN: Okay. Well, I'm
15 sure it does, because it makes no sense
16 to anybody else.

17 MR. HOLLINGSWORTH: Well, let's
18 watch the professional tone with these
19 questions. All right?

20 MR. MULLIGAN: Who are you?

21 MR. HOLLINGSWORTH: Adam
22 Hollingsworth.

23 MR. MULLIGAN: Okay. Are you
24 defending the witness?

1 MR. HOLLINGSWORTH: No. But in
2 this district, we all have an obligation
3 to be professional at depositions.

4 MR. MULLIGAN: Okay. I'm being
5 professional and I'm on a videotape.
6 I'm just trying to get an answer to my
7 questions. That's all. All right.

8 BY MR. MULLIGAN:

9 Q. And -- okay. Let's try this
10 again, all right?

11 MR. MULLIGAN: I don't appreciate
12 that, by the way.

13 BY MR. MULLIGAN:

14 Q. Okay. So this says -- I'm just
15 trying to extrapolate this to what you could
16 have done, okay? You guys had a 12-month
17 rolling average report, right?

18 A. Yes.

19 Q. And you didn't submit that to the
20 DEA ever, right?

21 A. Correct.

22 Q. And this says that even if you had
23 that, it wouldn't have been enough to satisfy
24 your reporting obligations under the CSA,

1 correct?

2 A. Yes.

3 Q. Okay. And the next sentence says,

4 "Registrants are reminded that their

5 responsibility does not end merely with the

6 filing of a suspicious order report."

7 Correct?

8 A. Mm-hmm.

9 Q. Do you agree with that?

10 A. Yes.

11 Q. Do you agree with that?

12 A. Yes.

13 Q. Okay. And it says, "Registrants

14 must conduct an independent analysis of

15 suspicious orders prior to completing a sale to

16 determine whether the controlled substances are

17 likely to be diverted from legitimate channels."

18 Do you see that?

19 A. Yes.

20 Q. And that's what we looked at

21 earlier, which is similar to the language

22 regarding avoiding filling in advance, right?

23 A. Yes.

24 Q. Okay. And do you think that DDA

1 did that -- DDM did that?

2 A. We did not do a -- stopping an
3 order prior to sending it out, so prospectively,
4 no.

5 Q. Okay. And, again, down below, it
6 says, "The regulation specifically states that
7 suspicious orders include orders of an unusual
8 size, orders deviating substantially from a
9 normal pattern and orders of an unusual
10 frequency."

11 Right?

12 A. That's right -- that's correct.

13 Q. And we saw that before, didn't we?

14 A. Yes.

15 Q. Okay. If you go down about
16 halfway through that paragraph, in the middle it
17 says, "The size of an order alone, whether or
18 not it deviates from a normal pattern, is enough
19 to trigger the registrant's responsibility to
20 report the order as suspicious."

21 Do you see that?

22 A. Yes.

23 Q. Okay. So that's saying that if
24 you have an order that's large, that's enough to

1 trigger your duty to report as suspicious,
2 correct?

3 A. That's what it states.

4 Q. Okay. Did DDM do that?

5 A. No.

6 Q. All right. Second page. At the
7 top it says, "Registrants that rely on rigid
8 formulas to define whether an order is
9 suspicious may be failing to detect suspicious
10 orders."

11 Do you see that?

12 A. Yes.

13 Q. Would you agree that your rolling
14 12-month average report was generated by a rigid
15 formula?

16 A. It was a set formula, yes.

17 Q. Okay. And then it says, "For
18 example, a system that identifies orders as
19 suspicious only if the total amount of a
20 controlled substance ordered during one month
21 exceeds the amount ordered the previous month by
22 certain percentages or more is insufficient."

23 Do you see that?

24 A. I do, yes.

1 Q. Okay. So this is saying that
2 DDM's system, which did exactly that, was
3 insufficient, correct?

4 A. No. Our system was not just
5 that -- based on that particular situation.

6 Q. Let's say -- okay. That's fair.
7 Let's say -- let's just take your report, your
8 rolling 12-month average report. You'd agree
9 that this is saying that if that report was all
10 you did, that it would be insufficient, correct?

11 A. It says that during one month. I
12 mean, when you throw in the average of the
13 previous year, that's a little bit different
14 than what that states.

15 Q. Correct. This system, one that
16 identified an order that was just bigger than
17 the last month, would actually be more sensitive
18 than yours, wouldn't it?

19 A. I don't see how.

20 Q. Well, okay. Let's just say --
21 let's just say we've got store 1 orders five
22 pills -- five bottles in December, right? And
23 then you order six bottles in January. That
24 would trigger a report like this, wouldn't it?

1 A. Does that mean -- is that
2 considered an excessive quantity?

3 Q. I'm just --

4 A. I don't think so.

5 Q. Well, let's look at this sentence
6 a little more closely, okay. It says, "A system
7 that identifies orders as suspicious only if the
8 total amount of a controlled substance ordered
9 during one month exceeds the amount ordered in
10 the previous month by a certain percentage."

11 Right? It's saying that's
12 insufficient, correct?

13 A. Yes.

14 Q. Okay. And are you telling me that
15 your report was different than this and was,
16 therefore, sufficient?

17 A. Yes.

18 Q. And tell me how.

19 A. Because this, in my opinion,
20 states that you're only looking at month to
21 month to month. That's it. But when you throw
22 in looking at over the last year, okay, as an
23 average, then you can determine -- it's not --
24 doesn't meet this criteria.

1 Q. Okay.

2 A. You're adding another layer on to
3 that reporting -- to the monthly reporting
4 system that isn't mentioned in this -- in this
5 designated -- this definition.

6 Q. So simply by including -- instead
7 of looking at the prior month, you're looking at
8 the average from the prior 12, you think that
9 that makes your report sufficient?

10 A. I think so.

11 Q. Okay. And what about that
12 difference makes it sufficient?

13 A. Because we're looking at a bigger
14 view than just one month, the previous month.
15 If you just look at the previous month -- we're
16 looking at the previous average year, not just
17 the previous month.

18 Q. And what about that helps you
19 identify suspicious orders better than a system
20 like this?

21 A. Because it's encompassing the
22 whole previous year rather than just the
23 previous month.

24 Q. Okay. Let's look at the next

1 sentence. It says, "This system fails to
2 identify orders placed by a pharmacy if the
3 pharmacy placed unusually large orders from the
4 beginning of its relationship with the
5 distributor."

6 Do you see that?

7 A. Yes.

8 Q. Your 12-month average report would
9 also fail to identify pharmacies ordering
10 unusually large amounts if they had ordered them
11 from the beginning, correct?

12 A. Well, they're referring to --
13 they're referring to just the monthly system.
14 It's referencing back to the previous sentence.

15 Q. It's explaining why the system
16 described here is inadequate, right?

17 A. Yes.

18 Q. And it's saying it's inadequate
19 because if a pharmacy is already ordering too
20 much, it doesn't catch that, if they keep
21 ordering too much, right?

22 A. Yes.

23 Q. The same thing applies to your
24 report, right? If a pharmacy is ordering 20

1 bottles every month, they should only be
2 ordering 10, it's not going to show up on your
3 report, is it?

4 A. Say again. If they're ordering 20
5 bottles every month --

6 Q. So if you have a store in your
7 system that has an average of 20 bottles a month
8 for a year and that's more than they should be
9 getting and they continue to order 20, that's
10 not going to show up on your report, is it?

11 A. You stated in your question if
12 it's more than what they should be getting.
13 What do you mean by that?

14 Q. I'm not testifying today. I'm the
15 only one who gets to ask questions.

16 MR. JOHNSON: I think that was a
17 clarification of the question.

18 A. Right.

19 Q. Okay. I've given you a specific
20 example, all right. So there's a store in your
21 system that has an average of 20 bottles a month
22 for a year, okay?

23 A. Okay.

24 Q. And under whatever definition you

1 want, they're getting more than they should be
2 getting, okay? Your report -- if they keep
3 ordering more than they're supposed to, your
4 report is not going to catch that, right?

5 A. They'll catch it if they get it
6 over that percentage.

7 Q. Right. But if they stay -- if
8 they continue ordering on a level playing field
9 but there's some issue baked in there and
10 they're getting too much --

11 A. The first time they order too
12 much, it would show up, right?

13 Q. Well, yes, there's got to be a
14 year zero somewhere, right? But if they're
15 starting at the beginning and they're ordering
16 too much, you're not going to catch it on your
17 report, correct?

18 A. Correct.

19 Q. Okay. So your report has the same
20 flaw that this report has, right?

21 MR. JOHNSON: Objection.

22 A. But in this situation, they're
23 talking about a monthly report. Our report was
24 different than just a monthly report.

1 Q. I know. And that wasn't an answer
2 to my question. No question -- no answer starts
3 with "but," okay? If you want to add a but
4 after and clarify it, then I'm okay with that,
5 but my question to you is very specific.

6 Your report has the same flaw that
7 the report in this example does, right?

8 A. No, it does not.

9 Q. Explain to me why not.

10 A. Because in this example, they're
11 going off of a strictly -- only a one-month
12 report. They're just looking at the previous
13 one month, okay? In our system, we're looking
14 at a rolling 12-month average. There's a
15 difference.

16 Q. And what's the difference?

17 A. The difference is you're looking
18 at more than just the previous month.

19 Q. Why is that -- why does that
20 matter?

21 A. It gives you a longer history.

22 Q. Why does that matter?

23 A. Because it -- it matters when
24 you're trying to determine what's a legitimate

1 order and what's not. You're looking at a
2 longer history.

3 Q. Okay. This letter is describing
4 the type of monitoring that's insufficient under
5 the CSA, right?

6 A. Yes.

7 Q. Okay. And it's saying that a
8 report that's generated when an order history
9 one month exceeds a prior month by a certain
10 percentage, it's saying that's not good enough,
11 right?

12 A. That's what it says.

13 Q. Okay. And the reason that's not
14 good enough is because if the pharmacy is
15 already ordering too much, it doesn't catch
16 that, right?

17 A. In this case, they're saying that
18 you're only looking at month to month.

19 Q. That's not an answer to my
20 question. I'm asking you a very specific
21 question.

22 The problem with a report like
23 that is if the pharmacy is already ordering too
24 much and they continue to order too much, it

1 doesn't catch that, right?

2 A. Right.

3 Q. Okay. The same is true for yours,
4 if over the course of a year they're ordering
5 too much, and they keep ordering too much, your
6 report doesn't catch that either, does it?

7 A. It would catch it if it hit that
8 99 percent.

9 Q. Okay. But otherwise it would not,
10 right?

11 A. Right.

12 Q. Okay.

13 MR. MULLIGAN: Everybody hungry?

14 MR. JOHNSON: I think this is a
15 good time if you're done with that
16 document.

17 MR. MULLIGAN: Yeah. That's good.

18 THE VIDEOGRAPHER: We're going off
19 the record at 12:23.

20 - - -

21 Thereupon, at 12:23 p.m. a lunch
22 recess was taken until 1:09 p.m.

23 - - -

24

1 Monday Afternoon Session
January 7, 2019

2 1:09 p.m.

3 - - -

4 THE VIDEOGRAPHER: We're back on
5 the record at 1:09.

6 BY MR. MULLIGAN:

7 Q. All right. Mr. Nameth, we're back
8 after a brief lunch break.

9 Did you get to eat?

10 A. Yes, I did. Thanks.

11 Q. Okay. Great.

12 We were talking about your
13 12-month report. And I'm curious -- I know the
14 percentage that would trigger something to show
15 up and that was 99 percent, right?

16 A. Right.

17 Q. In excess of whatever the average
18 was?

19 A. Right.

20 Q. What was the -- what was the unit
21 that was being subjected to that threshold, if
22 you will?

23 A. Bottles you mean versus tablets?

24 Q. Yeah. Which --

1 A. Bottles.

2 Q. It was bottles. Okay. So would
3 it be a bottle of a specific size or just
4 bottles in general?

5 A. I think it was a specific size.

6 Q. Okay. And so what were there --
7 let's say for hydrocodone, were there varying
8 sizes of bottles you could get?

9 A. Depending on the strength, yes.

10 Q. And so what would be a -- do you
11 know what the different options were for bottles
12 of hydrocodone?

13 A. 100s or 500s.

14 Q. So that would be a 100-tablet
15 bottle or a 500-tablet bottle?

16 A. Yes. But, you know, it depends on
17 when you're -- what period of time you're
18 looking at, too, because after a while, it
19 didn't seem rational to carry 100-size. If
20 you're ordering four bottles, you know, you
21 might as well just order one 5-.

22 Q. Okay. Were the 100-bottle
23 strengths different than the 500-bottle
24 strengths?

1 A. In what way? What do you mean?

2 Q. Well, you said it depends on the
3 strength, I think, earlier.

4 A. There could be -- there was an
5 instance where we had the same drug, the same
6 strength in 100s and 500s.

7 Q. You could get whatever strength
8 you wanted in either the 100- or 500-tab bottle?

9 A. You can get a particular strength
10 in either size. And in this one instance -- you
11 know, I think there was one, possibly two drugs
12 that we had different sizes of.

13 Q. Okay. So let's say -- well,
14 strike that.

15 If a store shifted from 100-tablet
16 count bottle to a 500-tablet count bottle, how,
17 if at all, would that be reflected in your
18 12-month report?

19 A. I think they went to a family of
20 drugs.

21 Q. Okay.

22 A. So they went -- you know, it was a
23 different -- it might be on a different page by
24 NDC number. So you could tell whether it was --

1 what size it was. In other words, it wasn't --
2 it didn't come out in 5,000 tablets. It came
3 out as 500s or 100s.

4 Q. Okay. And so let's just say, for
5 example, a store is ordering one bottle of 500
6 tablets, that's their monthly average, and then
7 they switch and they order five bottles of 100
8 tablets, would that show up on your greater than
9 99 percent average 12-month report?

10 A. It would if they were only
11 ordering one bottle of the 100s previously.

12 Q. Well, I know. My hypothetical was
13 they were ordering one bottle of 500s.

14 A. But then you said you were going
15 to switch to 100s.

16 Q. To five bottles of 100s. So the
17 tablets are the same, but now instead of one
18 bottle, we've got five. Would that show up on
19 your report?

20 A. Yes.

21 Q. Okay. And why is that?

22 A. Because I think previously they
23 were getting one bottle of 100. Now they're
24 getting five bottles of 100.

1 Q. Okay. So the report would say
2 their average is one bottle for the last year
3 and this month they ordered five bottles, you've
4 got to look into it?

5 A. We have to -- yes, that would be a
6 case where I knew that we had different sizes
7 and before they would -- they switched sizes.
8 They switched size bottles.

9 Q. Okay. Conversely, if a pharmacy
10 was ordering, let's say, two bottles of 100
11 tablets and that was their average for the last
12 12 months, okay? Is that fair example to start?

13 A. Yes.

14 Q. All right. And then they switched
15 the next month and they -- instead of getting
16 two bottles of 100 tablets, they get two bottles
17 of 500 tablets, would that show up on your
18 12-month average rolling report?

19 A. Yes, because previously they
20 didn't order any of the 500s. Now they're
21 ordering two. So their history was different.

22 Q. Okay. So it would say -- it would
23 say your previous 12-month on a 500-tablet
24 bottle is zero and now you've ordered two?

1 A. Correct.

2 Q. And that's greater than
3 99 percent?

4 A. Correct.

5 Q. So it wouldn't be based on the
6 tablet numbers, it would be based on the
7 bottle's size?

8 A. Yes.

9 Q. Okay. Was there any other unit
10 that was tracked by that report that would cause
11 it to generate other than bottle size?

12 A. Not to my knowledge. It's been a
13 while since I looked at that report.

14 Q. Okay. After those two letters
15 that we looked at from the DEA, do you believe
16 that DDM complied with every obligation
17 underneath the Controlled Substances Act?

18 A. I do. I still think that our
19 system, our SOMS system, looked at -- it wasn't
20 just the 12-month rolling average. It was --
21 you know, that was part and parcel of the plan,
22 the program.

23 Q. Okay.

24 A. We did have a prospective in

1 regards to the six-week average if Jill was
2 looking at that, but that was still part of the
3 program. It wasn't something that I look at,
4 but it was still something that was looked at by
5 humans, by people, a set of eyeballs on it.
6 So -- and if she had any questions about it, she
7 would either contact the stores or contact me
8 or -- you know.

9 Q. Just to be clear, I don't want to
10 know what Jill did because obviously Jill did
11 that, so --

12 A. All right.

13 Q. Yeah. But just after looking at
14 those two letters and all the things we
15 discussed, it's still your position that DDM
16 complied with the obligations that it had under
17 the Controlled Substances Act?

18 A. I believe so.

19 Q. Okay. All right. And just so
20 that we're clear, I want to just confirm, DDM's
21 suspicious order monitoring policies and
22 procedures were never put in writing, correct?

23 A. Correct.

24 Q. Okay. And those policies and

1 procedures were not effective at deterring or
2 preventing completely theft of hydrocodone from
3 stores, correct?

4 MR. JOHNSON: Objection.

5 A. I think that -- you're talking
6 about distribution level versus store level
7 here, right?

8 Q. I'm just asking you whether DDM's
9 suspicious order monitoring policies were
10 effective at preventing --

11 A. Yes.

12 Q. -- theft.

13 A. Yes.

14 Q. Okay. But you agreed with me
15 earlier today that there were several instances
16 where controlled substances were stolen from a
17 DDM pharmacy, right?

18 A. But -- yes, but the system
19 caught -- the systems in place caught whatever
20 was missing based on our monthly reports, based
21 on the rolling reports, based on everything that
22 we reported.

23 Q. Right. They caught it after the
24 fact, but they didn't prevent it, right?

1 A. On -- in a theft situation, we
2 caught it after the fact.

3 Q. And DDM has never reported a
4 single suspicious order to the DEA or the Ohio
5 State Board, right?

6 A. Correct.

7 Q. And DDM has never identified or
8 reported a single possible suspicious order
9 either, correct?

10 A. Correct.

11 Q. Okay. All right. Let's look at
12 Exhibit -- I think we're on 5.

13 MR. JOHNSON: 4 maybe.

14 MR. MULLIGAN: The last letter was
15 4.

16 MR. JOHNSON: You're right. I'm
17 sorry.

18 - - -

19 (DDM-Nameth Exhibit 5 marked.)

20 - - -

21 BY MR. MULLIGAN:

22 Q. Okay. So this is an e-mail with
23 an attachment. The e-mail is DDM53874, and the
24 attached document is DDM53912. And I'll just

1 tell you, this is an e-mail from after you
2 retired. But I mostly just want to know if you
3 know what this attachment is. It's the -- the
4 attachment is -- the title says "Shipments
5 Greater Than 99 percent of Average Movement."
6 And then it says "Controlled Drugs."

7 And the e-mail says, "Attached is
8 our suspicious monitoring report for the last 12
9 months."

10 Does that look like -- is this the
11 report that you would have reviewed -- I mean,
12 obviously the date is different but ...

13 A. I didn't see it in this form.

14 Q. Okay.

15 A. But, you know.

16 Q. This contains the information that
17 you would have reviewed on your -- on the report
18 that you got?

19 A. Yes.

20 Q. Okay. That's all I've got for
21 that one.

22 Let's do Exhibit 6.

23 Actually, no. Let's skip that
24 one.

1 - - -

2 (DDM-Nameth Exhibit 6 marked.)

3 - - -

4 BY MR. MULLIGAN:

5 Q. This is DDM11545. And this is a
6 letter from Pete Ratycz to the U.S. Department
7 of Justice dated November 13, 2001.

8 Do you see that?

9 A. Yes.

10 Q. Okay.

11 MR. JOHNSON: Can you give him a
12 second to look at it?

13 Q. I mean, if you need time to read
14 it, feel free, but I'm just going to ask you
15 some questions about it. We're going to walk
16 through it.

17 It says, "Dear Sirs: Please be
18 advised on November 6, 2001 a pharmacy
19 technician, Darlene Cottle, was apprehended
20 selling controlled substances to an undercover
21 officer outside our pharmacy located at -- in
22 Bellbrook, Ohio."

23 Do you see that?

24 A. Mm-hmm, yes.

1 Q. Do you recall that instance?

2 A. Vaguely.

3 Q. Okay. Do you know who Darlene
4 Cottle is?

5 A. I believe she is a pharmacy tech.

6 Q. Okay. Could you pick her out of a
7 lineup?

8 A. No.

9 Q. Okay. And so if you go down
10 further, it's talking about the drugs she had on
11 her. And it says, "However, a complete audit of
12 the suspected drugs indicate significant
13 shortage."

14 Do you see that?

15 A. Yes.

16 Q. Okay. And so this would indicate
17 that this store -- and I'm not sure what the
18 store number was, but they had a significant
19 shortage of their drugs, which was identified
20 after this pharmacy tech was caught selling
21 controlled substances to an undercover officer
22 just outside the pharmacy, right?

23 A. Yes.

24 Q. Okay. Is that concerning to you?

1 A. Yes.

2 Q. And why is that?

3 A. Well, several reasons. One is
4 that you're getting controlled substances out
5 into the public and the use of unprescribed
6 medication. Two is the employee. You never
7 want to see one of your own employees stealing.
8 So, you know, for those two reasons
9 specifically.

10 Q. Do you know -- well, if you look
11 down at the bottom, it says that the audit --
12 the drug audit was started on August 31, 2001.

13 Do you see that at the bottom?

14 A. Yes.

15 Q. But then the letter to the DEA is
16 dated November 13, 2001.

17 Do you see that?

18 A. Yes.

19 Q. Do you know why this issue
20 wouldn't have been reported to the DEA earlier
21 than -- it looks like it's about a month and a
22 half later -- actually, two and a half months
23 later?

24 A. Because they probably did a drug

1 audit. The store did their drug audit on
2 August 31st. And so they use that as a starting
3 point. And then count the number of medications
4 that were delivered under that particular --
5 those particular drugs they're looking for or
6 that were confiscated. So they have to go back
7 to a starting point.

8 Q. If you were going to do an audit
9 to see if there was a shortage of drugs, how
10 long would that take?

11 A. From beginning to end?

12 Q. Yeah.

13 A. It depends on the quantity, but
14 you'd have to probably -- it may take several
15 days. It may take -- it may take a week.

16 MR. JOHNSON: I'm going to have to
17 object. I don't know if you just read
18 it wrong or maybe I'm reading it wrong.
19 It says that the theft took place on
20 November 6th, and the letter is dated
21 November 13th. So it would have only
22 been a week?

23 MR. MULLIGAN: Is that an
24 objection?

1 MR. JOHNSON: Yes.

2 MR. MULLIGAN: Okay. Is it a form
3 objection?

4 MR. JOHNSON: Yes.

5 MR. MULLIGAN: Is it a form
6 objection?

7 MR. JOHNSON: Yes.

8 MR. MULLIGAN: Okay. Well, I was
9 asking about August 31st, which is at
10 the bottom of the letter.

11 MR. JOHNSON: I know you were
12 but -- okay. Well, they wouldn't have
13 known about the theft until --

14 MR. MULLIGAN: But that's
15 testimony, Tim.

16 MR. JOHNSON: Okay. So it's not a
17 mistake. I just thought you were making
18 a mistake.

19 MR. MULLIGAN: No. No. Thank
20 you, though. All right.

21 BY MR. MULLIGAN:

22 Q. Okay. So if an audit took a
23 couple days, and you started on August 31st, do
24 you have any understanding why this report

1 wouldn't have been made to the FDA -- I'm sorry,
2 the DEA on November 13th, 2011?

3 And your counsel may have
4 suggested the answer to you.

5 A. Well, what this states is that the
6 theft was confirmed on the basis of the findings
7 of the drug -- the drug audit -- we do a drug
8 audit every -- at the end of every month. And
9 that was on August 31st.

10 Q. Okay.

11 A. So when there was a theft
12 encountered, we had to go back to the 31st to
13 start our drug count to see what we got in stock
14 after that date -- what we had on stock as of
15 the 31st, what we sent them after the 31st to
16 the date of the theft. Then go run a report on
17 all the scripts that were filled during that
18 period of time, and come up with a number to the
19 State Board of what we're dealing with.

20 Q. Okay. And in fairness to Tim, I
21 think I understand what his point is, is that
22 this letter is not exactly clear as to the
23 time -- the stages in which it's unfolded,
24 right?

1 A. Right.

2 Q. Okay. Would it be likely that
3 there would be something suspicious that's
4 happening there or is there -- there's just a
5 monthly audit?

6 A. Yes.

7 Q. Okay. Regardless of whether
8 there's suspicions?

9 A. Correct.

10 Q. Okay. And so would it likely be
11 that there was an audit done, and August 31 is
12 when it started, and through that audit they
13 identified a shortage?

14 A. They wouldn't have identified the
15 shortage on August 31st.

16 Q. Okay. But within a couple days?

17 A. They would have identified the
18 shortage on the next month. They would have
19 known that there was a shortage.

20 Q. Okay. So it would have taken a
21 whole month to figure out whether there was a
22 shortage?

23 A. In this case, could have, yes.

24 Q. Okay. And then I'm guessing what

1 happened is -- and tell me if I'm wrong, and
2 this could be completely wrong. I just -- and I
3 only want to know what you remember. So if you
4 don't remember, then that's fine, too.

5 You identify a shortage. Then I'm
6 assuming you've got to figure out why that's
7 happening, right?

8 A. Correct.

9 Q. And that may be where this
10 undercover officer comes in? Was there ever a
11 time where you guys worked with the police to
12 try and identify who was diverting your pills in
13 your store?

14 A. We do. But in this particular
15 case, I can't answer whether or not somebody was
16 aware of it at that time --

17 Q. Okay.

18 A. -- or not. I just couldn't tell
19 you.

20 Q. Okay. So you're not sure whether
21 the undercover officer was someone who was
22 working with DDM or whether they just happened
23 to go to the store?

24 A. Correct.

1 Q. Okay. But you would agree this is
2 an example of diversion occurring within DDM's
3 system, correct?

4 A. Yes.

5 Q. Okay. And, in fact, it's by a
6 pharmacy technician who was within the pharmacy
7 operation department, right?

8 A. It takes place at store level,
9 right.

10 Q. Right, but it's a pharmacy
11 employee, right?

12 A. It's -- yes.

13 - - -

14 (DDM-Nameth Exhibit 7 marked.)

15 - - -

16 Q. Okay. Let's go to the next
17 exhibit, which is Exhibit 7. This is DDM358736.
18 This is an e-mail from you to Michelle Twardzik.

19 A. Twardzik.

20 Q. Yeah, Twardzik, dated May 14,
21 2005.

22 Do you see that?

23 A. Yes.

24 Q. Okay. And this says, "Here are

1 the total" -- well, it says, "Theft at store
2 number 41" and the subject.

3 Do you see that?

4 A. Yes, I do.

5 Q. And it says, "Here are the total
6 missing tablets I came up with."

7 Do you see?

8 A. Mm-hmm, yes.

9 Q. And it says Vicodin ES is short
10 657 tablets; Vicodin HP, short 100; Vicodin,
11 short 488."

12 Is that next one hydrocodone?

13 A. Yes, it is.

14 Q. Okay. And that's short 1,468
15 tablets?

16 A. Yes.

17 Q. And the next one is hydrocodone,
18 which I think is a lower strength, right?

19 A. Correct.

20 Q. And that's short 389 tablets,
21 right?

22 A. Right.

23 Q. And then hydrocodone 7.5, which is
24 like a middle strength?

1 A. Yes.

2 Q. And that's short 1,051 tablets?

3 A. Yes.

4 Q. Okay. Those seem like very large
5 shortages. Is that accurate?

6 A. I would say yes.

7 Q. Okay. So this is a pretty
8 substantial instance of diversion, would you
9 agree?

10 A. Yes.

11 Q. Do you recall this instance?

12 A. I recall it to the point that it
13 either could have been a robbery, that somebody
14 came in through the ceiling. You know, they --
15 that's happened several times where they're
16 going to drill down through, and now we're going
17 to have to come up with a specific what was
18 missing. So we have to, you know, run these
19 numbers and see what they got away with.

20 Q. So as you sit here today, you
21 can't recall whether this was an employee theft
22 or an outside burglary?

23 A. I don't recall.

24 Q. Okay. Do you recall any specific

1 instances where a store was burglarized and a
2 controlled substance was stolen?

3 A. Yes. I mean, not too clearly, but
4 I do remember we had burglaries.

5 Q. Okay. Do you know how many there
6 would have been in the time that you were the
7 director of pharmacy operations?

8 MR. JOHNSON: Objection.

9 A. Six, seven. I don't know.

10 Q. Okay. Would there be
11 documentation of those?

12 A. Probably with the State Board and
13 the police department, I would guess.

14 Q. Did DDM keep records of things
15 like that?

16 A. Loss prevention may, but I don't
17 know how far back they go.

18 Q. Okay. Do you know how these
19 missing tablets would have been identified?

20 A. Yes. The same way as the other
21 report, you'd go back to a specific count. Then
22 you would have to establish a beginning point.
23 Then you would have to establish how many pills
24 were sent to the pharmacy, how many scripts were

1 dispensed, and come up with a specific number.

2 Q. And how long would that take?

3 A. It might take half your day

4 sometimes.

5 Q. Okay. So I'll just represent I

6 just did the math. If you add up all these

7 missing tablets, the total is 4,153 pills.

8 Does that look about right?

9 A. Yes.

10 Q. Okay. And would these types of

11 drugs typically come in 100-bottle -- or

12 100-tablet bottles or 500-tablet bottles; do you

13 know?

14 A. It's a mixture of both.

15 Q. Okay. So assuming they're all

16 500-tablet bottles, then that means there's over

17 eight bottles missing; would that be fair?

18 A. Well, I know that there are some

19 on here. The HP only came in 100s.

20 Q. Okay. But you agree, I mean, all

21 these missing tablet counts are larger than a

22 100-tab bottle, right? Or the same sizes.

23 A. Some are. Not all of them.

24 Q. Well, one is you're missing 100.

1 So I would imagine that unless someone -- was it
2 likely that someone would just take a whole
3 bottle off the shelf or was it more that they
4 were, take a few here, take a few there so it
5 wouldn't get noticed, in your experience?

6 A. In a case where you have a
7 break-in, they would normally rake the shelf.
8 In a pilferage they would probably, or most
9 likely, take a few here, a few there. It would
10 be more obvious if they made off with whole
11 bottles.

12 Q. Okay. So the pilferage would take
13 more time to accomplish?

14 A. Yes.

15 Q. But it would be more discrete as
16 well?

17 A. Yes.

18 Q. Okay. And you'd agree this is
19 another example of diversion occurring at a DDM
20 store, correct?

21 A. At store level?

22 Q. Yeah.

23 A. Yes.

24 Q. But within the DDM system, right?

1 A. Yes.

2 Q. And so at least as it relates to
3 2001, the last item we looked at, and this one
4 in 2005, you were aware that there was diversion
5 taking place within the DDM system, correct?

6 A. Yes.

7 Q. Okay. Let's look at Exhibit 8.
8 Before we go to that one, did
9 you -- do you know, did you ever catch anybody
10 on this one, if you recall?

11 A. If it was a break-in, I can't
12 answer that question. It would have been loss
13 prevention.

14 Q. Okay. So you just don't recall
15 whether it was an employee or a break-in?

16 A. Well, we -- there isn't a case
17 that we never caught any of the employees,
18 because there would be -- there would be video
19 footage. All pharmacies had video recordings.

20 Q. Okay.

21 A. So you could tell if there was
22 somebody obviously taking large quantities like
23 that.

24 Q. Right.

1 A. That they would be caught on film.

2 Q. Okay.

3 A. So --

4 Q. Same basic question. Why would
5 they do it, right?

6 A. Can't answer that question.

7 MR. JOHNSON: That's a pretty big
8 question to answer.

9 Q. Yeah. I guess addiction is one
10 answer, right?

11 A. That's -- yes.

12 Q. Okay. All right. So if you -- if
13 we need to go back and figure out where these
14 went, we would just need to either, one, look at
15 a tape, if it still exists, or, two, look at any
16 records that may be associated with this theft?

17 A. Through loss prevention possibly.

18 Q. Okay. Do you have any idea
19 whether DDM would still have possession of
20 either the tapes associated with this theft
21 specifically or any documentation of it?

22 A. I have no idea.

23 Q. Okay. When you were there and a
24 theft was identified and you found the relevant

1 footage, would that be something that you would
2 extract and keep somewhere?

3 A. Loss prevention would keep the
4 footage.

5 Q. Okay.

6 A. If it was someone that they were
7 prosecuting, they would keep the footage until
8 afterwards, I would assume, and then after that,
9 I'm not quite sure where it would go.

10 Q. That's your smoking gun evidence,
11 right?

12 A. Yes.

13 Q. Who was in charge of loss
14 prevention at DDM when you were there?

15 A. Bob Graf.

16 Q. Okay. Is that Buddy Graf?

17 A. That's his father.

18 Q. Okay. I've seen Buddy on a lot of
19 e-mails. What was his role?

20 A. Buddy took over -- took over for
21 Bob, and they were within the same role.

22 Q. Okay.

23 A. Buddy had a little bit more
24 expanded responsibilities than Bob.

1 Q. Do you know when Buddy took over
2 for Bob?

3 A. I don't recall.

4 Q. Okay. Do you recall doing
5 anything or putting any policies and procedures
6 in place to avoid this kind of issue as it was
7 cropping up?

8 MR. JOHNSON: Objection.

9 A. Other than putting cameras --
10 making sure cameras were in our stores, no.

11 Q. Okay. But like that 12-month
12 report, the camera is only going to help you
13 identify the person after the fact, right?

14 A. Correct.

15 - - -

16 (DDM-Nameth Exhibit 8 marked.)

17 - - -

18 Q. Okay. All right. Let's go to 8.
19 DDM355119. So if you look at the bottom, this
20 is an e-mail dated April 3, 2007 from Holly
21 Turner.

22 Do you know who she is?

23 A. She is one of the pharmacists.

24 Q. Okay. Would she have been a chief

1 pharmacist?

2 A. It depends on the time frame. At
3 this particular time, I'm not sure.

4 Q. Okay. It says, "Pete, here are
5 the pill counts you wanted."

6 And then it lists some pill counts
7 for Vicodin, correct?

8 A. Correct.

9 Q. All right. And if you go above --
10 well, strike that.

11 Do you know why Pete would have
12 been asking for pill counts from Holly?

13 A. Yes. They could have had another
14 loss. Whether it was pilferage by a pharmacy
15 tech or a break-in, at this particular point, I
16 couldn't tell you.

17 Q. Okay. If you go to the top, Pete,
18 it looks like, forwards the counts to Lisa
19 Biancardi, Laura Taylor, and Jill Strang and
20 copies you.

21 Do you see that?

22 A. Mm-hmm, yes.

23 Q. And he says, "When it rains it
24 pours. Now DDM 32."

1 Do you know what he's talking
2 about there?

3 MR. JOHNSON: Objection.

4 A. It would only be an assumption on
5 my part, so I -- you know, I can't answer that
6 specifically.

7 Q. Okay. What do you think he's
8 referring to?

9 A. There could have been two
10 incidences, you know, within a certain time
11 period.

12 Q. Or more than two?

13 A. Not necessarily.

14 Q. But you don't know, right?

15 A. I have no idea.

16 Q. Okay. I mean, "pouring" sounds
17 like a problem that would include more than two
18 instances.

19 A. Nobody likes to see any.

20 Q. Exactly. Okay. And then it says,
21 "At least it's not a two-year span," exclamation
22 point, exclamation point, exclamation point.

23 Do you know what -- what's he
24 referring to there? Do you recall any issue

1 over a two-year span?

2 A. No. Again, I would have to guess,
3 and I don't want to do that. It's not really
4 from me. It's from Pete. Is he talking about a
5 two-year span that he has to look back and count
6 for two years? I'm not sure.

7 Q. Okay. But you'd agree this is
8 referring to another instance of diversion
9 occurring within the DDM system, right?

10 A. Well, it could be. And, again,
11 I'm speculating, but it could be a situation
12 where if the counts were off -- there's a
13 reference in the very first sentence. It says,
14 "#32 did not return any Vicodin or Vicodin ES to
15 Return Solutions."

16 So they're trying to determine
17 whether or not the count is off because they
18 want to make sure there was nothing -- no Return
19 Solutions involved, but it doesn't look like
20 there was any. So in that regard, I don't know
21 if it's -- it's probably in regards to a loss,
22 some type of loss.

23 Q. Okay. And that's the same as
24 diversion, right?

1 A. Yes, yes.

2 Q. Let's go to Exhibit 9.

3 - - -

4 (DDM-Nameth Exhibit 9 marked.)

5 - - -

6 Q. This is DDM11543. We're going to
7 start about halfway down the first page. This
8 is an e-mail from Chuck Bontempo.

9 Do you know who he is?

10 A. Yes, I do.

11 Q. Who is he?

12 A. He is the pharmacist in the
13 Lakewood store.

14 Q. Do you know what number that is?

15 A. Store number 5.

16 Q. Okay. Was he the chief
17 pharmacist?

18 A. At that time probably.

19 Q. Okay. And this is dated
20 October 1, 2008, and the subject is "Missing
21 OxyContin 80-milligram," right?

22 A. Correct.

23 Q. And OxyContin is an opioid, right?

24 A. Correct.

1 Q. Okay. It says, "Dear Pete, Lisa
2 Biancardi told me to contact you if I had no
3 luck. Well, I had no luck. I did a report on
4 brand and generic. We dispensed two
5 prescriptions." And it lists two prescriptions.

6 It says, "We started off the month
7 with 210 tablets. We dispensed 60 leaving 150
8 on 9/10 of 2008. We dispensed 90 leaving 60 on
9 September 19th, 2008. We received 100 on
10 September 22, 2008 leaving 160. And today we
11 only have 60."

12 Do you see that?

13 A. Yes, I do.

14 Q. And, again, it feels like we're in
15 a math class today, but if you do that math, it
16 looks like there's 100 missing OxyContin pills,
17 correct?

18 A. Yes. And initially looking at it,
19 there's another layer of probability here that I
20 don't see in this e-mail. Go ahead.

21 Q. I was just -- I haven't asked you
22 the next question yet.

23 A. Okay.

24 Q. But you would agree that this

1 shows that there's 100 pills missing based on
2 the facts we just read, correct?

3 A. Yes.

4 Q. Okay. And then it says, "I ran a
5 Drug Usage Report."

6 What is that? Is that just an
7 inventory report?

8 A. It's a script -- script report
9 based on that NDC, how many scripts went out.

10 Q. Okay. And that would show how
11 many pills went out as part of a prescription?

12 A. Right.

13 Q. Okay. And it says, "As of now, I
14 am filling out the DEA 106 form."

15 Do you know what that is?

16 A. Yes, standard form for theft or
17 loss reported to the DEA.

18 Q. Okay. And I imagine that DDM
19 filled those out for all these other
20 diversionary --

21 A. Yes.

22 Q. -- instances we looked at?

23 A. Right.

24 Q. And then the next page says, "I am

1 not sure if I should report it as a loss or a
2 theft."

3 Do you see that?

4 A. Yes.

5 Q. Was that always kind of an issue?

6 A. Pardon me?

7 Q. Was it always hard to determine
8 whether it was a loss or a theft or a one-two?

9 A. Normally not, but there are cases
10 where you have to really peel down the layers
11 and determine whether it was or was not.

12 Q. Okay. If you looked at the video
13 and it was someone who shouldn't be there, you
14 could figure it out pretty easily, right?

15 A. Yes.

16 Q. But the more difficult case might
17 be, there's a pharmacist back there and they
18 pushed two pills into their pocket as they're
19 separating them, right?

20 A. Yeah.

21 Q. Okay. So the fact that this one
22 isn't obvious would suggest that it was probably
23 an inside job, right?

24 A. Not necessarily. And what I don't

1 see in this e-mail -- and there's actually a
2 reference in the previous Exhibit 8 where
3 they're stating -- and this is one thing I would
4 have asked for, which maybe it was later, but it
5 says, did you -- about Return Solutions. Did
6 they have anything -- it's a full bottle. If
7 something went outdated, it would go out of your
8 inventory to Return Solutions.

9 If he didn't look at that, then
10 that's part and parcel of where the things are.
11 So that's part of what he should be looking at
12 other than looking at script counts.

13 Q. So what you're saying is we don't
14 have enough information in this e-mail to
15 determine whether this was just a counting error
16 or whether someone inside took these pills?

17 A. Yes.

18 Q. Okay. Would there be a file
19 somewhere which would document the outcome of
20 the investigation associated with this?

21 A. Not to my knowledge, unless there
22 was -- there was possibly -- no, I don't think
23 so.

24 Q. Did you keep files associated with

1 missing drugs at DDM?

2 A. I did not.

3 Q. Who did?

4 A. I'm not sure.

5 Q. Okay. So you can't identify

6 anybody, as you sit here today, who would

7 monitor or investigate these situations and keep

8 files?

9 A. Loss prevention.

10 Q. So that would be Buddy Graf?

11 A. Yes.

12 Q. Okay. Or Bob?

13 A. Depends on the time of year.

14 Q. Gotcha. He's a Florida guy, too?

15 MR. JOHNSON: He's dead.

16 A. Yeah. He was a Florida guy.

17 - - -

18 (DDM-Nameth Exhibit 10 marked.)

19 - - -

20 Q. All right. We're going to look at

21 Exhibit 10 now. This is DDM3408. This is an

22 e-mail from Greg Steinkerchner to Pete Ratycz

23 and Buddy Graf, and you're copied on that. And

24 it's dated November 11, 2010.

1 Do you see that?

2 A. Yes.

3 Q. And the subject says "Update on

4 33."

5 Right?

6 A. Yes.

7 Q. Who's Gregory Steinkerchner?

8 A. He is -- he was a store

9 supervisor -- or a regional supervisor. He was
10 also a chief pharmacist, but I think in this
11 context -- I'd have to probably read the e-mail
12 a little bit deeper, but --

13 Q. Okay.

14 A. -- he most likely, at this point,
15 was a supervisor.

16 Q. Okay. We'll get there. All
17 right. So this says, "Pete, Buddy. Andy and I
18 worked last night at 33" -- which is Store 33
19 probably, right?

20 A. Yes.

21 Q. -- "to get a handle on any
22 problems at 33. We did a complete C-II count
23 and found no missing meds but three possible
24 filing errors from Eric's shift on the 9th."

1 Do you see that?

2 A. Yes.

3 Q. Do you know who Eric is?

4 A. I do not. Probably a tech.

5 Q. Okay. "Andy is contacting the
6 patients involved and being PC about the
7 problems."

8 Do you see that?

9 A. Yes.

10 Q. Then it says, "We also did a count
11 on all the likely Benzos (Xanax, Valium, Ativan,
12 et cetera) because one of Eric's text message to
13 one of the techs Tuesday night, he said he was
14 back taking meds and talked about benzos."

15 Do you see that?

16 A. Yes.

17 Q. And benzos are part of that
18 trilogy that's plagued -- or led to the opioid
19 epidemic, correct? It's part of the trilogy?

20 A. Part of the problem.

21 Q. Okay. Does this refresh your
22 recollection as to who Eric is yet?

23 A. I believe Eric was a tech.

24 Q. Okay. "He" -- which is still

1 talking about Eric -- "does not have an Rx for
2 any drugs in that class on his file."

3 Do you see?

4 A. Yes.

5 Q. "The bad news of the situation is
6 that the numbers of most -- for most of the
7 drugs in the benzo class are short."

8 Right?

9 A. Correct.

10 Q. "The ones on the fast movers shelf
11 all were short."

12 Right?

13 A. Correct.

14 Q. What is the "fast movers shelf"?

15 A. Most of the drugs are in
16 alphabetical order with the exception of drugs
17 that are dispensed frequently, and that's
18 usually in front of the pharmacist.

19 Q. More highly prescribed drugs are
20 put in a place that's more convenient to access?

21 A. Correct.

22 Q. And would that include
23 hydrocodone?

24 A. That depended on the pharmacy.

1 Some pharmacists liked to intermingle it with
2 the rest of their drugs. Some pharmacists had
3 it in front of them. So it could be depending
4 upon the store.

5 Q. Was hydrocodone a fast mover?

6 A. Specific strength.

7 Q. Which one would be?

8 A. Possibly 5/500.

9 Q. All right. If you skip the next
10 sentence, it says, "In the next few days, we are
11 going to have to put the State Board on notice
12 and sort this out."

13 Do you see that?

14 A. Yes.

15 Q. Do you know why they wouldn't have
16 put the State Board on notice immediately?

17 A. I assume they wanted to come up
18 with -- to be sure that this was a theft before
19 they called the board.

20 Q. Okay. So they wanted to
21 investigate it first?

22 A. Yeah, before they involved someone
23 else.

24 Q. Okay.

1 A. They wanted to look at -- I mean,
2 obviously they don't want to wait too long
3 but ...

4 Q. Do you know, do the reporting
5 obligations permit you to wait until after an
6 internal investigation is done for reporting?

7 A. An internal memo? No.

8 Q. Correct.

9 A. No. We have no --

10 Q. Well, my question is, do you know
11 whether the reporting obligations, either under
12 Ohio State law or federal law, permit DDM to do
13 an internal investigation into a potential theft
14 before it reports that?

15 A. I'm not aware of that.

16 Q. Okay. So you don't know whether
17 they needed to report it immediately upon being
18 suspicious or whether they could report it after
19 doing a full investigation?

20 MR. JOHNSON: Objection.

21 A. Once there is a loss determined,
22 you would have to determine whether or not it
23 was a theft or not, and then you could report
24 it.

1 Q. Okay. But to ask my question
2 again, you don't know whether DDM was required
3 to report a possible loss upon learning of it or
4 whether it could wait until after it did a full
5 investigation?

6 A. I don't think that the word
7 "possible" was -- is the focal point here. So
8 if you have a possible loss -- if you have a
9 known loss, then you have to report it.

10 Q. Immediately or after an
11 investigation?

12 A. You should report it as soon as
13 you know it's a loss.

14 Q. Okay. And this e-mail would
15 suggest that there's -- that you know there's a
16 loss, right, because it says, "The numbers for
17 most of the drugs in the benzo class are short,"
18 right, third paragraph?

19 A. Yes. Were they also looking
20 towards other avenues of why they were short or
21 were there other instances of why? I didn't
22 read the whole thing, though.

23 Q. Well, that would be an
24 investigation, right?

1 A. Yes.

2 Q. Okay. And so my question to you
3 is, now -- as of the date of this e-mail, we
4 know there's a loss. We know there's stuff
5 missing. Does the reporting need to happen
6 right then or can DDM take some time to look
7 into it and then report? Do you know?

8 A. It should be reported as soon as
9 you determine there's a loss.

10 Q. Okay. So when it says, "In the
11 next few days, we are going to have to put the
12 State Board on notice," that's probably not fast
13 enough, right?

14 MR. JOHNSON: Objection.

15 A. It says "we should," right? Where
16 is that sentence?

17 Q. It's the third paragraph, fourth
18 sentence on the right. If you look at the
19 screen, that might help you.

20 A. Oh, okay.

21 MR. JOHNSON: Yeah. It's easier
22 on the screen. It's the last --

23 A. In the next few days -- okay.

24 Q. So this is saying, we know there's

1 a loss and we're going to have report it in the
2 next couple of days, right?

3 A. Correct.

4 Q. Okay. Is that sufficient, based
5 on your understanding of DDM's reporting
6 obligations, to wait a couple days?

7 A. Generally once we investigate and
8 know there's a loss, we should notify the board
9 as soon as possible.

10 Q. Okay. All right. The next
11 sentence says, "I've been talking with Eric's
12 sponsor in the PRO program and they have been
13 screen" -- I'm assuming that's a type --
14 "screening Eric for a larger drug panel."

15 Do you see that?

16 A. Yes.

17 Q. What's the PRO program?

18 A. I believe it was a program that
19 someone that had a drug problem is enrolled in.

20 Q. Would it be the Pharmacists
21 Rehabilitation Organization? Is that familiar?

22 A. Yes.

23 Q. Okay. And are you surprised to
24 learn that a DDM employee was in a program that

1 was trying to rehabilitate him for a drug
2 addiction?

3 A. It's not the norm. I'm a little
4 bit surprised. The specifics -- and now that I
5 read this a little bit deeper -- because Eric --
6 because of the mention of the PRO program, Eric
7 is the other pharmacist, I believe.

8 Q. Okay. So Eric was a pharmacist at
9 Store 33?

10 A. I believe so.

11 Q. Is Eric still at Store 33?

12 A. No.

13 Q. Do you know, was Eric terminated
14 from Store 33 around this time?

15 A. I can't answer that, but I
16 assume -- I have to assume he was. We -- just
17 because someone is in a PRO program doesn't
18 necessarily mean we're going to fire them.
19 We're going to give them a chance to get clean.

20 So -- and that's the reason why
21 you said, "Am I surprised?" I'm surprised, but
22 it's not unheard of. It's not the norm. It's
23 rare to speak of, but yes.

24 Q. If I told you that the PRO program

1 website says that at some point in their career,
2 10 to 15 percent of pharmacists struggle with
3 drug or alcohol addiction, would that be
4 surprising to you?

5 MR. JOHNSON: Objection.

6 A. It would be a little bit
7 surprising that number is that high.

8 Q. Okay. Do you know whether DDM
9 ever had any other pharmacists that were dealing
10 with drug addictions when you were there?

11 A. I know of one.

12 Q. Okay. Who was that?

13 A. I don't recall his name, to tell
14 you the truth.

15 Q. Do you know which store he was at?

16 A. I don't even remember that, to
17 tell you the truth. I -- you know, if you give
18 me three names in front of me, I would pick them
19 out --

20 Q. Okay.

21 A. -- but coming off the top of my
22 head, no.

23 Q. If you had a -- if a pharmacist
24 was part of the PRO program, was that something

1 that they would have to inform DDM about?

2 A. Yes.

3 Q. Okay. And would DDM communicate
4 with the PRO program to ensure that its
5 pharmacists were meeting all the requirements of
6 that program?

7 A. And it was -- yes, because it was
8 my understanding that you have to go through a
9 routine urinalysis when you're on PRO.

10 Q. Is that --

11 A. I think so, yes. So ...

12 Q. Who was the person at DDM who
13 interacted with PRO to ensure that the
14 pharmacists at DDM who were in that program were
15 complying with their obligations?

16 A. I did not do that, so I'm not
17 aware of that. If that was Pete's
18 responsibility or not or Buddy Graf's, I'm not
19 sure.

20 Q. As somebody who was charged with
21 reviewing store ordering habits for suspicious
22 orders, do you think it would have been helpful
23 to know whether the pharmacists placing those
24 orders had a drug addiction problem?

1 A. I think it would come out in
2 the -- you know, our SOMS program, but it could
3 have been helpful.

4 Q. It would have been helpful to have
5 that information when you were looking at a
6 particular store?

7 A. It's always -- the more
8 information you have, the better off you are.

9 Q. Okay. All right. If you look at
10 the next sentence, it says, "If he, Eric, has
11 fallen off the wagon, it has to be just in the
12 last week or so."

13 Do you see that?

14 A. Yes.

15 Q. And then the next sentence says,
16 "Andy did talk to his mother last evening while
17 I was there, and she said he was admitted to the
18 hospital."

19 Do you see that?

20 A. Yes.

21 Q. Okay. So it sounds like he's
22 having a pretty rough time, right?

23 A. Yes.

24 Q. "Andy told her that his shifts are

1 covered until Monday and not to worry. Just get
2 in touch when he can and we will go from there."

3 Do you see that?

4 A. Yes.

5 Q. Do you have any idea what the
6 outcome of that situation was?

7 A. I believe he never returned to our
8 store, so -- he was under medical care at that
9 point.

10 Q. Okay. Do you know whether this
11 instance was reported to the DEA?

12 A. I don't know.

13 Q. You would have expected --

14 A. On 106, probably.

15 Q. You would expect it to be
16 reported, right?

17 A. Yes.

18 MR. MULLIGAN: Before you go to
19 that one, we'll just wait a second.

20 BY MR. MULLIGAN:

21 Q. So obviously we looked at a number
22 of documents here that reflect DDM pharmacy
23 employees were stealing drugs, fair?

24 A. We've seen a couple of them.

1 Q. Okay. And I'll represent to you
2 that I didn't bring them all, but I brought
3 some. And we've also seen a document now that
4 shows that at least one individual was -- had a
5 drug addiction, correct?

6 A. Yes.

7 Q. Okay. Did -- was there ever any
8 discussions within DDM to try and stem these
9 sort of diversionary issues, that you recall?

10 A. Other than what was in place
11 currently, no.

12 Q. Okay. Did you ever consider drug
13 testing employees in the pharmacies?

14 A. It had been talked about and not
15 implemented. But at a later date, it has been
16 implemented.

17 Q. Do you know when that was
18 implemented?

19 A. I'm going to guess around 2013,
20 2014, something like that.

21 Q. Was it right around the time you
22 left or before?

23 A. It was before I left.

24 Q. Okay.

1 A. So ...

2 Q. All right. Let's look at
3 Exhibit 11, which is DDM 13519.

4 - - -

5 (DDM-Nameth Exhibit 11 marked.)

6 - - -

7 BY MR. MULLIGAN:

8 Q. This is an e-mail chain from
9 September of 2013. I'm just going to direct you
10 to the back page. We're going to kind of work
11 our way backwards. If you want, you can look at
12 the screen.

13 Okay. So if you look at that
14 bottom e-mail, it says from Doug Boodjeh to Pete
15 Ratycz, Don Boodjeh, John Gans, and Buddy Graf.

16 Do you see that?

17 A. Yes.

18 Q. And the subject is "Stolen Drugs,"
19 right?

20 A. Yes.

21 Q. It says, "Two techs in one week,
22 both new hires, and two different stores, 19 and
23 35."

24 Do you see?

1 A. Yes.

2 Q. It says, "Were caught stealing
3 drugs. It scares me to think how many others
4 are doing it and were not catching."

5 Do you see that?

6 A. Yes.

7 Q. Okay. Do you know -- are you
8 confident at this time that you guys were
9 catching anyone who was stealing drugs?

10 A. Was I confident that we were
11 catching everyone?

12 Q. Yeah.

13 A. No, I don't think we were catching
14 every possible one, but we would, after the
15 fact, due to our counts.

16 Q. Okay. Would it be common for
17 Mr. Boodjeh and his brother and Mr. Gans to be
18 involved in a discussion about diversion at the
19 store level?

20 A. Only in the fact that they
21 probably sat on the board together.

22 Q. Okay. Did you ever attend a board
23 meeting?

24 A. I did not.

1 Q. So then Mr. Boodjeh says, "Should
2 we consider drug screening all techs and
3 pharmacists."

4 Do you see that?

5 A. Yes.

6 Q. Okay. And was that the first time
7 something like that had been discussed that you
8 know of, around that time frame?

9 A. I don't know because I was not on
10 the board. And in this case, he was talking to
11 the board.

12 Q. Okay. Do you ever recall just a
13 conversation at DDM generally about the need to
14 have drug testing for pharmacy employees prior
15 to September of 2013?

16 A. Not that I recall.

17 Q. Okay. And you'd agree that based
18 on that first document we looked at, which
19 identified a tech selling drugs outside the
20 store, that this e-mail was actually about
21 12 years later, right?

22 A. It was.

23 Q. Is there any reason why DDM
24 couldn't have instituted a drug testing program

1 for its pharmacy employees prior to September of
2 2013?

3 A. No.

4 Q. If you go up to the very top of
5 that last page, it's a response from Mr. Ratycz.
6 And he said, "One can make that point based on
7 recent events. I agree. There's probably more
8 we are not catching."

9 Do you see that?

10 A. Yes.

11 Q. Do you recall having other issues
12 regarding diversion in 2013?

13 A. Not offhand.

14 Q. Okay. If you go back a page,
15 Mr. Boodjeh responds and says, "So can we do all
16 pharmacy personnel?"

17 Do you see that?

18 A. Yes.

19 Q. Okay. And then Pete responds and
20 says, "I am fine with it."

21 Then he's talking about how to do
22 it. And then it says, "Tom Nameth said two
23 potential new hires walked away once they
24 learned of the urine screening."

1 Do you see that?

2 A. Yes.

3 Q. Do you recall that happening?

4 A. Not specifically.

5 Q. Okay. But it sounds like if these
6 two people walked away upon learning that they
7 were going to have urine screening, you might
8 have just avoided hiring two addicts, right?

9 MR. JOHNSON: Objection.

10 A. Correct.

11 Q. Do you recall any other instance
12 where individuals who were informed of drug
13 screening decided not to go through with
14 applying for the job?

15 A. No, I do not.

16 Q. Okay. If you go down, second to
17 last line, it says, "Ironically the guy at DDM
18 35 was a relatively new hire."

19 Do you see that?

20 A. Yes.

21 Q. Do you know why that would to be
22 ironic?

23 A. They're talking in relationship to
24 the drug screening.

1 Q. Why would it be ironic that he was
2 new?

3 A. From that statement, I would have
4 to assume that he was caught either stealing
5 drugs or was using drugs.

6 Q. Okay. But you're not sure, right?

7 A. No. At that point, I'm not sure
8 whether they were referring to what drugs,
9 whether it was -- it didn't matter which drugs.
10 It was marijuana or controlled drugs, what have
11 you.

12 Q. Did it concern you that two
13 potential hires walked away when they learned
14 about urine screening?

15 A. It was a concern at that time, I'm
16 sure, as it would be to me today, so ...

17 Q. Okay. So if you go up another
18 e-mail. This is from Buddy Graf to Pete. The
19 second paragraph, it says, "As it turns out,
20 both of the two techs involved in the most
21 recent incidents would have been identified and
22 avoided by the drug screening. The one at 35
23 has a nasty heroin addiction. He was trading
24 what he stole from us for heroin as well as for

1 the money to buy the heroin. And the one at 19
2 told John Glinski that she ingests every bit of
3 Vicodin that she can get her hands on. Both of
4 these people's habits would show up in their
5 drug screening."

6 Do you see that?

7 A. Yes.

8 Q. Is it really concerning to find
9 out that -- about these drug habits from DDM
10 pharmacy employees?

11 A. It's concerning.

12 Q. Did it cause you to question the
13 amount of trust that you put in your DDM people
14 to prevent and avoid diversion?

15 A. Well, the trust that I have was
16 with pharmacists.

17 Q. Okay. So not with the techs?

18 A. And the techs, I really did not
19 get down to that granular level to know them.

20 Q. Okay.

21 A. So to answer your question, I
22 guess, it's concerning.

23 Q. Okay. You relied on the
24 pharmacists to know the techs; is that fair?

1 A. Correct.

2 Q. Okay. But we also did look at a
3 document earlier where you actually had a
4 pharmacist who was an addict, right?

5 A. Yes.

6 Q. Okay. And that wasn't something
7 that you knew about?

8 A. I did not.

9 Q. Okay. Did that cause -- would
10 that cause you to be concerned about the
11 effectiveness of your suspicious order
12 monitoring policy, and particularly the part
13 where you put your trust in your pharmacists to
14 ensure that diversion is not occurring?

15 A. I think that we would have caught
16 anybody that was diverting drugs in that habit,
17 so the system in place could have -- obviously
18 these people are all getting caught one way or
19 another. So the system is -- something in the
20 system is working, but it's still concerning
21 that you can be proactive.

22 Q. Well, we only know about the ones
23 that got caught, right?

24 A. Right.

1 Q. So we don't know if you caught
2 everybody --

3 A. Correct.

4 Q. -- or if you only caught
5 10 percent, right?

6 A. Correct.

7 Q. Okay. And, of course, the system
8 even with the people who it did catch, it caught
9 them after the diversion, right?

10 A. Yes. They were still employed, so
11 we were able to ...

12 Q. My point is, it didn't prevent the
13 diversion?

14 A. Yes.

15 Q. Okay. All right. If you go up
16 another page, the sentence -- 522 at the bottom.
17 This is Pete responding. He says, "I would
18 propose doing a full sweep and then just testing
19 a percentage thereafter. Who knows what we have
20 in our pharmacies."

21 Do you see that?

22 A. Yes.

23 Q. Okay. We spent a lot of time
24 today talking about Know Your Customer, didn't

1 we?

2 A. In reference to pharmacists, yes.

3 Q. Right. But this is the vice
4 president of pharmacy saying, "Who knows what we
5 have in our pharmacies" in response to the
6 identification of two pharmacy techs who had
7 significant addiction problems, right?

8 A. Yes.

9 Q. Okay. So it doesn't sound like
10 you guys know what's in your pharmacies, do you?

11 A. Below the level of pharmacists.

12 Q. Are you qualifying that?

13 A. Yeah, I -- yes.

14 Q. Okay. But, again, we just looked
15 at a document that showed that there was a
16 pharmacist who had an addiction problem and you
17 didn't know about that, right?

18 A. Correct.

19 Q. Okay. So if you trusted him to
20 prevent diversion, and he was engaged in
21 diversion, then your system failed, right?

22 MR. JOHNSON: Objection.

23 A. The system caught it after the
24 fact.

1 Q. Okay. But it failed to prevent
2 diversion, right?

3 A. In the cases where you mentioned
4 small theft, no. In the cases where -- it
5 didn't prevent it when you're talking about
6 theft in small quantities.

7 Q. Okay.

8 A. It would prevent it if you're
9 talking about diverting large quantities of
10 drugs. When you're talking about ordering a
11 larger quantity than normal, that would come out
12 in various -- for various reasons, whether it
13 was proactive on Jill's report or post active on
14 our report. And then doing the monthly studies,
15 you would come up with a number of missing
16 tablets.

17 And so what you're talking about
18 is two things going on here. One is at store
19 level and one is on the warehouse level, right?

20 Q. I don't have a question. I think
21 you've answered my question.

22 A. Okay.

23 Q. Okay. You'd agree, though, that,
24 as this e-mail confirms, and as the other

1 documents show, that you guys didn't really
2 fully know what was in your pharmacies, right,
3 from an employee standpoint?

4 A. From a technician standpoint.

5 Q. And from a pharmacist standpoint?

6 A. Well, we knew 99.9 percent of
7 them.

8 Q. Well, you had 74 stores, right?

9 A. Yeah.

10 Q. And we just identified one
11 pharmacist that had a drug addiction, right?

12 A. Correct.

13 Q. Okay. And I have more documents.
14 I haven't gotten to all of them yet, but I --
15 it's clear that you guys do not know what's in
16 your pharmacies, right?

17 MR. JOHNSON: Objection.

18 A. I wouldn't say "clear."

19 Q. You can't know everybody, right?

20 A. Correct.

21 Q. And presumably somebody who has a
22 drug addiction who's a pharmacist is going to do
23 their best to cover that up, right?

24 A. Obviously he didn't do a very good

1 job.

2 Q. Okay. Had you tested the
3 individual, done a drug screen on that Eric
4 pharmacist we talked about, you probably would
5 have caught that, right?

6 A. Well, you're assuming that he's --
7 he was addicted before we hired him. He could
8 have been -- after he was hired, he could have
9 started using then.

10 Q. That's fair. But --

11 A. So you wouldn't have caught him at
12 the hiring process.

13 Q. -- assuming that you did drug
14 tests while he was using drugs, you would have
15 caught that, right?

16 A. But the drug tests were after --
17 after the initial sweep, the drug tests were
18 random. So ...

19 Q. I didn't ask if they were random.
20 I asked if while he was using drugs, you tested
21 pharmacy employees you would have caught him,
22 right?

23 A. If he was using at the time we
24 tested.

1 Q. Okay. Okay. So that sentence
2 ends, it says, "Well, who knows what we have in
3 our pharmacies. Once we get the bad ones out,
4 then we would only need to know about the ones
5 that became addicted after successfully passing
6 a urine test."

7 Right?

8 A. Okay. There we go.

9 Q. So the idea behind a screening
10 process would be to find out about your
11 employees and figure out who the bad ones were,
12 right?

13 A. Correct.

14 Q. Because you didn't have enough
15 information about whether they were good or bad
16 without a screening?

17 A. Yes.

18 Q. Okay. And then Buddy responds and
19 he says, "We will likely be surprised by how
20 many users are either identified or quit before
21 taking their test. Sad but very likely true."

22 Do you agree with that?

23 A. Yeah.

24 Q. Okay. Do you recall how many

1 people were identified or quit before taking
2 their test?

3 A. No.

4 Q. Was there -- I assume that when
5 the screening went into place, some people did
6 quit?

7 A. Possibly some techs.

8 Q. Okay. Did anybody test positive?

9 A. There might have been a couple of
10 incidences, but they -- it's a little bit fuzzy.
11 And I don't know whether they -- after they
12 tested positive, never came back or quit after
13 that point.

14 Q. Okay.

15 A. So the specifics are a little bit
16 hazy.

17 Q. Do you know how many people left
18 DDM's employment once this drug screening
19 process or testing was put in place?

20 A. I don't think we had any
21 pharmacists, and I don't know how many
22 technicians left.

23 Q. Do you know whether any pharmacist
24 ever tested positive, while you were there, to

1 the drug screening?

2 A. None that I'm aware of.

3 Q. Okay. Do you know where I would
4 go to look and confirm that?

5 A. Probably loss prevention.

6 Q. Okay. Buddy?

7 A. Yes.

8 Q. Did DDM have an HR department?

9 A. Yes.

10 Q. And who ran that?

11 A. Janet Zaccaro. She is there now
12 currently.

13 Q. Does she maintain employment files
14 for all DDM employees?

15 A. Yes.

16 Q. Including pharmacy employees?

17 A. Yeah -- I'm not sure if she
18 maintained -- yes, I would guess so.

19 Q. Did you, in pharmacy operations,
20 maintain files for pharmacy employees?

21 A. No.

22 Q. So if I wanted to go and see what
23 issues any particular pharmacy employee had,
24 would Janet be the person to ask?

1 A. Yes.

2 Q. Okay. Would Janet be able to tell
3 you if any employees or pharmacists tested
4 positive under the drug screening program?

5 A. I believe she would be able to.

6 Q. Who's John Glinski?

7 A. He is loss prevention.

8 Q. So he works under Buddy?

9 A. Yes.

10 Q. Okay. If you go to the next page
11 up, it says -- this is from Buddy to Pete.
12 Copies the same three gentlemen. "At this point
13 the following is off the record and not to be
14 shared with others please."

15 And it says, "In talking with the
16 State Rx Board inspector, it turns out that this
17 kid at 35 has a real bad heroin problem. He was
18 actually already in a treatment program for it.
19 The people who he buys his heroin from
20 encouraged/pushed him to get the job at DDM so
21 he could have access to the Oxy, et cetera."

22 Do you see that?

23 A. Yes.

24 Q. Is that concerning to you as the

1 director of pharmacy operations?

2 A. Yes, it is.

3 Q. And this would even suggest that
4 criminals were encouraging people to get jobs at
5 DDM so that they could gain access to the
6 opioids that DDM was selling, correct?

7 A. It points that direction, yes.

8 Q. Okay. Is this the first time
9 you're learning about this, these facts?

10 A. Yes.

11 Q. So nobody at DDM ever told you
12 about this?

13 A. It's the first I remember seeing
14 this.

15 Q. Did you know that DDM was a target
16 for criminals who were trying to gain access to
17 controlled substances?

18 A. No, I did not.

19 Q. Does that concern you?

20 A. Yes, it does.

21 Q. Okay. Especially because it would
22 suggest that you guys were a target because your
23 systems weren't adequate, correct?

24 A. Not necessarily. I think they

1 could have been in any pharmacy.

2 Q. Well, it looks like they pushed
3 him to get the job specifically at DDM. You
4 wouldn't know why, though, huh?

5 A. No.

6 Q. Okay. And it says, "They loaded
7 him up with plenty of heroin so he would be
8 enslaved to them and the heroin, so he in turn
9 would supply them with all they needed out of
10 the Rx," which is the pharmacy, right?

11 A. Correct.

12 Q. Okay. "Once he would have
13 undoubtedly been caught and become a liability,
14 they would have simply given him an overdose of
15 heroin and he would have been gone."

16 Do you see that?

17 A. Yes.

18 Q. That's pretty terrible to have
19 someone like that working in your pharmacy,
20 isn't it?

21 A. Not encouraging.

22 Q. No. It suggests that you guys
23 probably didn't know your people very well,
24 doesn't it?

1 MR. JOHNSON: Objection.

2 A. We knew our pharmacists well.

3 Q. Well, I don't -- it looks like
4 this guy was a tech, right?

5 A. Yes.

6 Q. I mean, the tech has access to
7 this stuff in the stores as well, doesn't he?

8 A. That was under lock and key. The
9 only person that had it would be a pharmacist.

10 Q. So how would you explain this tech
11 getting access to all these drugs?

12 A. It says so he could have access to
13 Oxy, et cetera.

14 Q. Okay. Let's go to the next
15 paragraph. It says, "The street value of the
16 Oxy is at about \$10 per milligram."

17 Right?

18 A. Yes.

19 Q. So that means a 5-milligram tablet
20 would be worth \$50?

21 A. Yes.

22 Q. Okay. It says, "He had on his
23 person about 8,000 worth of street value."

24 Right?

1 A. Yes.

2 Q. Okay. That's a lot -- that's a
3 lot of Oxy, isn't it?

4 A. Yes.

5 Q. Okay. "He dumped a bunch of other
6 stuff when the registered pharmacist confronted
7 him and she was not looking for a brief second
8 (seen on video). So he had even more. His
9 hoodie in the back room was loaded with pills as
10 well. His house was loaded with pills, too."

11 Right?

12 A. Yes.

13 Q. Is it concerning to you that this
14 individual was able to get so much Oxy out of
15 your store without you guys knowing about it?

16 MR. JOHNSON: Objection.

17 A. Yes, it's concerning.

18 Q. Okay. All right. If you go to --
19 if you go up, it says, "Even more reason to do
20 all pharmacy staff soon and then periodically."

21 Do you see that?

22 So they're not proposing to leave
23 out pharmacists, are they?

24 A. No.

1 Q. Okay. And at the top -- I don't
2 know. It looks like that's from Pete.
3 Mr. Ratycz says, "I agree. Waiting only hurts
4 us at this point."

5 Do you know why it would hurt DDM?

6 A. Well, for obvious reasons. We
7 didn't want people diverting drugs in our
8 stores.

9 Q. If you go to the front page, Pete
10 responds again. The last sentence says, "At
11 least we are not being passive with time as we
12 would otherwise."

13 Do you know what he means by that?

14 A. Just a general statement. I have
15 no idea.

16 Q. As a smaller family-run business,
17 would you agree that DDM was maybe more
18 reactionary to these kinds of things than sort
19 of proactive?

20 A. I don't know if I would go that
21 far, but with regard to drug testing, I would
22 like to have seen us do something a little more
23 substantial early on, but the counts there bore
24 out -- the people were eventually -- were

1 caught. But to your statement, if we had a drug
2 screening in place, that possibly could have led
3 to them not being hired.

4 Q. Well, it sounds like when you guys
5 told people they were going to be tested, some
6 people just left, right? So in that instance,
7 that actually did prevent people who may have
8 been addicts from coming in and working at your
9 store, right?

10 A. Yeah. And the date of that -- I
11 think it was around the same time period this
12 all is going on, if I'm not mistaken, so they
13 might have asked at that particular point, "Do
14 you do drug testing?" And if it was going to be
15 instituted in a short period of time, we -- I
16 probably would have -- or they would have been
17 told that. So ...

18 Q. But it sounds like that drug
19 testing program actually had somewhat of a
20 preventative effect --

21 A. Some merit to it?

22 Q. -- correct?

23 A. Yes.

24 Q. Okay. Do you guys wish you'd put

1 that in place earlier?

2 MR. JOHNSON: Objection.

3 Q. Do you wish that DDM had put that
4 in place earlier?

5 A. Yes.

6 Q. Okay. Let's do Exhibit 12,
7 DDM75841.

8 - - -

9 (DDM-Nameth Exhibit 12 marked.)

10 - - -

11 Q. Okay. We're going to -- this is
12 an e-mail chain that starts on December 3 of
13 2013, which I assume it was somewhat -- right
14 before you were probably retiring?

15 A. Yes.

16 Q. Okay. If you go to the back page,
17 there's an e-mail from you to Steve Rehner. Who
18 is that?

19 A. He was the chief pharmacist at
20 store number 3.

21 Q. Okay. And the subject is "Tech
22 hours." And it says, "I am sure you are aware
23 that your store has had a 10 percent decline in
24 the number of Rx's filled year to date."

1 Do you see that?

2 A. Yes.

3 Q. And then the crux of the e-mail
4 looks like you guys were cutting the amount of
5 hours that they could have access to a tech in
6 the pharmacy; is that fair?

7 A. Yes.

8 Q. Okay. And so would the amount of
9 people that you would staff in a pharmacy depend
10 on how many prescriptions were being filled
11 there?

12 A. That was part and parcel of what
13 we looked at.

14 Q. Basically just has to do with
15 profit margins and making sure that you're not
16 spending too much to make what you'd otherwise
17 make; is that fair?

18 A. Well, that's a small percentage of
19 it.

20 Q. Okay. When you cut a tech's
21 hours, did that put more strain on your
22 pharmacists naturally?

23 A. We only cut the tech hours when
24 they have a decline in the number of scripts.

1 So they go hand-in-hand. So if there's less
2 work to be done, the manhours don't require it.
3 Now, if left upon the pharmacist at the store,
4 wouldn't you like to have, you know, less hours
5 or less work or easier work? It's not up them
6 to determine that. It's up to us to look at
7 those numbers.

8 Q. When you cut tech hours, did you
9 do anything to see whether that impacted a
10 pharmacist's ability to look for and monitor for
11 diversion or illegitimate prescriptions?

12 A. No.

13 Q. You don't know whether it impacted
14 their ability to do that or not?

15 A. I don't think it impacted their
16 ability, because they had to do the same
17 reporting whether they had 200 tech hours or
18 190.

19 Q. Well, let's just say someone comes
20 in with a prescription -- let's say five people
21 come in all at the same time with a prescription
22 from one doctor, would you expect your
23 pharmacy -- pharmacist to do any sort of
24 investigation into as to why those individuals

1 are all there at the same time?

2 A. Five individual people from the
3 same doctor?

4 Q. At the same time.

5 A. I'm sure the pharmacist would be
6 aware of it.

7 Q. What do you mean by "be aware of
8 it"?

9 A. He would be aware that they're all
10 coming from the same doctor. So most likely, it
11 would raise his suspicions and determine him --
12 whether he's going to fill or not fill those
13 scripts.

14 Q. Okay. Did DDM have any policies
15 and procedures about what a pharmacist was
16 supposed to do in a situation like that?

17 A. Other than we talking to them in
18 our yearly meeting and sending e-mails, and they
19 knew that the State Board was looking for doctor
20 shopping and out-of-state scripts. That was --
21 they were very well aware of that during this --
22 especially during this time period.

23 Q. Right. I'm asking you very
24 specifically if DDM had any policies and

1 procedures about what a pharmacist was supposed
2 to do to run their due diligence, other than
3 filling those scripts.

4 A. Other than relying on the State
5 Board of Pharmacy, no.

6 Q. Okay. All right. If you go up an
7 e-mail, this is the response from Steve to you
8 telling him you're cutting his tech hours. If
9 you go about halfway down, he says, "It has been
10 quite chaotic in here lately with all the work
11 on the table now. On another note, possibly
12 related to the chaos, Jennifer did the month end
13 C-II count, and she finds that we are off by
14 number 21 on 5/325-milligram Percocet."

15 Do you see that?

16 A. Yes.

17 Q. This pharmacist is telling you
18 that he's overloaded, right?

19 A. Yes.

20 Q. Okay. And then he's telling
21 you -- this is right after you told him you're
22 cutting his support staff, right?

23 A. Correct.

24 Q. Okay. And then he's telling you

1 that he's overloaded and that the C-II count
2 shows there's a shortage, right?

3 A. Correct.

4 Q. Okay. And he says, "We are
5 looking to see if we can figure it out, and let
6 me know what you want me to do in the meantime.
7 I have to say, Tom, I am getting tired of being
8 a policeman looking for problems."

9 Do you see that?

10 A. Yes.

11 Q. Do you know what he's talking
12 about?

13 A. Well, most of the complaints
14 coming from our pharmacists were trying to
15 determine which prescriptions they were going to
16 fill and which they were not, and that put them
17 in the policeman type of atmosphere. They felt
18 that the AMA and the DEA should have had more
19 input into which physicians are actually under
20 scrutiny, and they did disseminate some of that
21 down to us through the State Board. But in my
22 opinion, it needed to be looked at much broader.

23 Q. Would you agree that cutting his
24 support staff hours in this type of a context

1 would be a questionable decision?

2 A. Well, if you look at store 85,
3 he's referring to that, they have had a
4 decline -- store 85 was literally, I'm going to
5 say, three miles, four miles away, and it ate
6 into their -- their total script count.

7 However, this is December. It's a
8 busy time of year because people are wanting the
9 year-end statement reports and so on and so
10 forth.

11 So does it state when the cuts
12 would take place? I did not look at that. What
13 date they were going to take place.

14 Q. I'm just asking you very
15 specifically, this pharmacist is telling you
16 that he's -- it's chaotic and he's overwhelmed,
17 right?

18 A. Yes.

19 Q. Okay. And he's telling you the
20 reason it's chaotic and he's overwhelmed is
21 because he's having to police probably not only
22 his staff but also the prescriptions that are
23 coming in, right, and that there's a shortage?

24 A. I don't see anything about staff.

1 Q. Okay. Well, I -- that's fair.

2 A. Policing his staff.

3 Q. Well, he said he's tired of being
4 a policeman.

5 A. Okay.

6 Q. I don't know if that applies to
7 staff or customers. Do you know?

8 A. I think it applies -- replies to
9 determining who to fill the scripts for and who
10 not. They're playing policeman at the point of
11 sale. You know, how do you determine whether
12 it's a legitimate pain -- patient in front of
13 you and who is not.

14 Q. Okay. So he's got a problem and
15 instead of helping him, you guys are just
16 cutting his support staff hours, right?

17 MR. JOHNSON: Objection.

18 A. There is no indication on when
19 that would take place.

20 Q. Well, if you go to the back
21 page --

22 A. That I'm aware of.

23 Q. -- he says, "I am only going to
24 cut you back to 200 for now. This is due to the

1 holiday crunch and also the Pioneer learning
2 curve. After January/February, you most likely
3 be cut again to about 190."

4 Right?

5 A. Right.

6 Q. Okay. If you go up further, you
7 respond -- and he actually says one of the
8 reasons why he doesn't want you to cut it down
9 here is because he's already made the schedule.

10 And then your response on the 4th,
11 you said, the schedule was only posted from --
12 up to 12/10/13 in the call to the store, right?
13 So you're kind of calling him out on that,
14 aren't you?

15 A. Yes.

16 Q. Okay. And you say, "With the
17 numbers dropping, I know you understand that the
18 tech hours have to change. Can you still adjust
19 the schedule to reflect the changes?"

20 Right?

21 A. Yes.

22 Q. So despite all the problems he's
23 raised here about having to be a policeman and
24 prevent diversion, you're still telling him he's

1 got to reduce his support staff hours, right?

2 A. In this case, yes.

3 Q. Okay. And then you do address to
4 the C-II shortage and you say, "As for the C-II
5 shortage, if you have exhausted all possible
6 scenarios and still can't find them, you will
7 have to turn in a DEA 106 to the DEA and OSBP."

8 Right?

9 A. Correct.

10 Q. So basically you're telling him,
11 keep looking, see if you can figure it out. If
12 you can't figure it out, but only then, then
13 report it. Is that fair?

14 A. Yes. And by -- what I meant by
15 that was that, did he look at the Return
16 Solutions and whatever it had to take place.

17 Q. Right. So you -- this is you
18 instructing him that he doesn't need to report
19 this to the DEA or the OSBP until after he's
20 exhausted all possible scenarios to figure out
21 where these missing pills went, right?

22 A. Generally, yes.

23 Q. Okay. What you didn't respond to
24 in your e-mail was him telling you that it was

1 chaotic and that he was having difficulty being
2 a policeman, right?

3 A. Yes.

4 Q. Okay. Were you concerned about
5 that? Did that make you worried about what was
6 happening at that store?

7 A. No.

8 Q. Why is that?

9 A. Because every pharmacist in the
10 country at that time was being asked to do the
11 same thing and it was becoming a burden of the
12 job to police controlled drug prescriptions.

13 Q. So basically he was just
14 complaining about something that everybody was
15 having to deal with?

16 A. Yes.

17 Q. Okay. All right. If you go up
18 above, Steve writes back and he said, "I'll look
19 at the new schedule and change it around. As
20 far as the 5/325" -- that's Percocet, right?

21 A. Yes.

22 Q. -- "I wanted to see your take if
23 you think we need to be concerned further or
24 these things happen and just be more cautious in

1 counting despite the chaos."

2 Right?

3 A. Yes.

4 Q. All right. And your response to
5 that is, "I assume you are double counting the
6 C-IIIs."

7 Did you actually verify that?

8 A. Yes.

9 Q. How do you know that? The word
10 "assume" makes me think that you didn't.

11 A. It's the way I stated it.

12 Q. Okay. It's a "make sure you're
13 counting the C-IIIs," fair?

14 A. Yes.

15 Q. Is that what you meant? Okay.

16 And then you said, "Therefore, it
17 is unusual that they would be off even during
18 the chaos?"

19 Right?

20 A. Correct.

21 Q. So if he's counting them, they
22 shouldn't be off, right?

23 A. Correct.

24 Q. Okay. So if they're off, that

1 means he's probably not counting them, right?

2 A. At this point we don't know if
3 they're off.

4 Q. Okay. Well, I think he said that,
5 "We're off by 21," down below?

6 A. At this point we don't know what
7 the resolution was.

8 Q. Whether there were other
9 explanations for why that was missing?

10 A. Correct.

11 Q. All right. Then you said, "I
12 think I would just keep this in mind if there
13 are more shortages." Right? And that's in
14 response to his question down below about being
15 concerned further or just being cautious?

16 A. Yes.

17 Q. Do you know whether this was ever
18 reported to the DEA?

19 A. I don't know if it was resolved or
20 not. If it was unresolved, it would have been
21 reported.

22 Q. If it was unresolved?

23 A. If there was a shortage.

24 Q. Okay. Do you know for sure?

1 A. I don't know for sure.

2 Q. Would you have reported it or
3 would the pharmacist have reported it?

4 A. The pharmacist would have at store
5 level.

6 Q. Would they provide a copy of that
7 to corporate level?

8 A. Yes.

9 Q. Okay. Would that be provided to
10 you?

11 A. Yes. But sitting here today, I
12 can't tell you honestly one way or another
13 whether it was or not.

14 Q. Yeah. I don't blame you.

15 Did you have like an open file for
16 any type of investigation like this so that it
17 would prompt you to kind of follow up with them,
18 or did you just rely on them following up with
19 you when they determined where the shortage --

20 A. Usually I would have a file left
21 out on my desk until it was resolved.

22 Q. And once it resolved -- would
23 resolve, where would you put that file?

24 A. I'm trying to recall where it

1 would have gone. I'm trying to decide whether
2 or not there was a store file particular to
3 that -- to each particular store --

4 Q. Okay.

5 A. -- or whether there was a State
6 Board file that when in.

7 Q. I gotcha. So you just don't know?

8 A. So I'm not quite sure which file
9 it was going to go into.

10 Q. If I retire, I'm not ever going to
11 have a file again. So I can understand.

12 All right. Let's go to
13 Exhibit 13. This is DDM46047.

14 - - -

15 (DDM-Nameth Exhibit 13 marked.)

16 - - -

17 Q. This is an e-mail from you to
18 P.J. Ferut, right?

19 A. Yes.

20 Q. And the date is September 9, 2013.
21 Do you see that?

22 A. Yes.

23 Q. All right. It says, "Hi, P.J. We
24 have a" -- well, sorry. The subject line is

1 "Theft Store 35," right?

2 A. Correct.

3 Q. So you've got another theft,
4 right?

5 Do you see it?

6 A. Correct.

7 Q. Okay. And it says, "We have a
8 theft of controlled substances at store number
9 35."

10 Do you see that?

11 A. Yes.

12 Q. And it looks like you're asking
13 for sort of the movement of drugs to and from
14 that store to try and figure out what's missing,
15 right?

16 A. Correct.

17 Q. It also says, "I will contact
18 Cardinal to get their purchases. They have
19 nothing from Prescription Supply or Anda."

20 What are Prescription Supply and
21 Anda?

22 A. Well, they're wholesalers.

23 Q. Were stores able to order opioids
24 or hydrocodone from multiple suppliers at that

1 time?

2 A. They could get it from -- yes,
3 yes, they could.

4 Q. Was there ever a time where they
5 were only permitted to get them from one
6 location?

7 A. Oh, yeah, there could have been.
8 I mean, prior to Prescription Supply and Anda
9 using them, they could have -- prior to them
10 coming on board, there would have been one.

11 Q. Do you ever recall a time when you
12 were the director of pharmacy operations where
13 there was only one supplier of hydrocodone?

14 A. No. There's always two or more.

15 Q. When there was a shift at
16 Cardinal, were there -- was there more than one,
17 Cardinal and somebody else?

18 A. Cardinal and our warehouse.

19 Q. But at that point, I believe the
20 shift to Cardinal was because hydrocodone became
21 a Schedule II; isn't that correct?

22 A. Oh, back in '14?

23 Q. Yeah.

24 A. Okay. So ask the question again.

1 Q. Yeah, sure.

2 A. Now I've got to get my dates back
3 in line here.

4 Q. When hydrocodone became a
5 Schedule II --

6 A. Yes.

7 Q. -- and DDM was required to get
8 hydrocodone from another -- from a distributor
9 other than DDM, they used Cardinal, right?

10 A. Correct.

11 Q. Was there another sort of backup?

12 A. Not that I'm aware of.

13 Q. Okay. So it would have just been
14 Cardinal?

15 A. In '14, it would have been just
16 Cardinal.

17 - - -

18 (DDM-Nameth Exhibit 14 marked.)

19 - - -

20 Q. Okay. Exhibit 14, DDM 261505.
21 This is an e-mail from Pete Ratycz to all
22 pharmacists.

23 MR. JOHNSON: Can we go off just
24 for a second.

1 MR. MULLIGAN: Oh. What's the --

2 MR. JOHNSON: No. I just

3 wanted --

4 THE VIDEOGRAPHER: We're going off
5 the record at 2:38.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We're back on
8 the record at 2:48.

9 BY MR. MULLIGAN:

10 Q. Okay. Before we went off the
11 record, Mr. Nameth, we were looking at
12 Exhibit 14.

13 Do you have that in front of you?

14 A. Not yet.

15 Q. All right. This is an e-mail from
16 Pete Ratycz to all pharmacists. You're copied
17 on this e-mail, right?

18 A. Mm-hmm.

19 Q. The date is -- actually, it's five
20 days after the last one we looked at,
21 September 14, 2013?

22 A. Yeah.

23 Q. And the subject is "Recent
24 Technician Theft," right?

1 A. Yes.

2 Q. And it says, "In the past month
3 we've unfortunately encountered multiple
4 episodes of technicians stealing controlled
5 substances from the pharmacy."

6 Right?

7 A. Yes.

8 Q. "In one circumstance, the
9 technician was addicted, and then the other tech
10 was not a user but a seller."

11 Right?

12 A. Mm-hmm.

13 Q. "The theft is extreme and
14 excessive in both instances, so please be
15 cognizant of what your technicians are doing and
16 don't hesitate to report suspicious behavior to
17 your pharmacy supervisor."

18 Right?

19 A. Yes.

20 Q. Okay. Do you know what this means
21 by "extreme and excessive"?

22 A. Any theft, I mean, would be
23 extreme and excessive, but there must have been
24 multiple, so that's what he's referring to,

1 extreme and excessive.

2 Q. Well, it says that both -- there's
3 multiple episodes, and it says the theft was
4 extreme and excessive in both instances, right?

5 A. Oh, okay. So they're looking at
6 higher counts, higher missing tablets.

7 Q. Okay. So potentially the
8 diversion from within is becoming a bigger
9 problem than maybe it was before; fair to say?

10 A. It's subjective, but ...

11 Q. This is the most strongly worded
12 documentation of an inside job that we've seen,
13 right?

14 A. Yes. Yes.

15 Q. And this is an e-mail from Pete
16 Ratycz to all pharmacists, right?

17 A. Correct.

18 Q. So it sounds like this is sort of
19 an "all hands on deck. We've got a big
20 problem." Right?

21 A. It's be vigilant.

22 Q. Okay. But he's telling all
23 pharmacists in this instance as opposed to just
24 the corporate group, right?

1 A. Yes.

2 Q. Okay. So the next sentence says,
3 "More importantly, don't enable technicians by
4 allowing them to store purses, book bags, or
5 coats in the pharmacy."

6 Right?

7 A. Yes.

8 Q. "Also, it's imperative that you
9 keep your C-II cabinet locked when not in use."

10 Right?

11 A. Correct.

12 Q. Was that ever an issue, that you
13 know of?

14 A. Locking the C-II cabinet?

15 Q. Correct.

16 A. There might have been instances
17 where a pharmacist had it open and went to the
18 bathroom and came back. But we're telling
19 them --

20 Q. Don't do that?

21 A. -- don't do that.

22 Q. Okay. "Please use sound wisdom.
23 The OSBP has recently begun levying fines and
24 issuing citations in cases where the amount is

1 beyond reasonable and they feel the pharmacists
2 were negligent with the safeguarding of
3 controlled substances."

4 Do you see that?

5 A. Yes.

6 Q. So this at least indicates that
7 there are maybe not DDM but some stores that
8 have pharmacists who are negligent with the
9 safeguarding of controlled substances, correct?

10 A. Correct.

11 Q. And would that explain to you at
12 least or provide some explanation for why the
13 DEA imposes a corresponding responsibility on
14 distributors as well as pharmacists to prevent
15 against diversion?

16 A. That's a part of it, yes.

17 Q. Okay. Do you know whether this
18 e-mail to all pharmacists was in response to or
19 in fear of being fined by the State Board?

20 MR. JOHNSON: Objection.

21 A. I don't think so. I think the
22 concern was that we just don't want to have
23 theft in our stores, and it's becoming evident
24 that the occurrence is more than what we would

1 like to see.

2 Q. Okay. And, in fact, it's been
3 on -- going on for 12 years, right?

4 A. I think there's always -- there's
5 always going to be some theft in anything at any
6 time.

7 Q. Right. Well, we've looked at
8 documents that show it went on for over a
9 12-year period of time, right?

10 MR. JOHNSON: Objection.

11 Q. At least the first document we
12 looked at was 2001, right?

13 A. Correct.

14 - - -

15 (DDM-Nameth Exhibit 15 marked.)

16 - - -

17 Q. Okay. All right. We're going to
18 go to Exhibit 15, which is DDM71409. This is an
19 e-mail from Jeff Kistler to John Glinski, and
20 you are copied on it with Jason and Buddy and
21 Greg. This is dated November 17, 2013.

22 Do you see that?

23 A. Yes.

24 Q. Okay. And it says, "Hi, John. I

1 closed Friday 11/15/2013 and got hard counts at
2 store close. Heather Gaal worked Saturday as
3 only pharmacist. I opened Sunday morning,
4 11/17/13, and took hard counts and found the
5 following shortages since I closed Friday
6 evening."

7 And then he lists that there's 20
8 Oxy, 5-milligram, and 15 Oxy, 10 milligrams
9 missing, correct?

10 A. Yes.

11 Q. Okay. And Jeff Kistler, is he the
12 chief pharmacist at store 30?

13 A. He is. He was.

14 Q. Do you know who Heather Gaal was?

15 A. She was a staff pharmacist.

16 Q. Okay. And this would suggest that
17 there was a loss of pills on Heather's watch,
18 right?

19 A. Correct.

20 Q. Okay. And that would suggest that
21 either Heather diverted those pills or somebody
22 did it on her watch, right?

23 A. That's what it's suggesting.

24 Q. Okay. Do you know what the

1 outcome was to this?

2 A. You know, it's a little gray. I
3 don't want to speak specifically about it. I
4 can't recall whether she was terminated at that
5 point or whether or not -- yeah, I would have to
6 go back, and I really don't recall.

7 Q. You'd need more documentation?

8 A. I guess.

9 Q. Okay. Would this have been
10 reported to the DEA and the Ohio State Board
11 immediately, or would an investigation have been
12 done?

13 A. Yes. This was -- because they had
14 the counts prior and they had the numbers post,
15 that -- this should have been turned into the
16 State Board, and if they did a 106, to the DEA.

17 Q. If they did one? They should have
18 done one, right?

19 A. I assume they did one.

20 Q. Okay. Who was responsible for
21 assuring that the pharmacist submitted those
22 forms and reported the diversion?

23 A. The supervisor of that particular
24 store, because the chain of command at this

1 particular time, in 2013, was the chief
2 pharmacist, then going backwards or upwards to
3 the supervisor, then director and vice
4 president.

5 Q. Okay. So the supervisor was the
6 one responsible -- responsible for making sure
7 that the pharmacist reported any loss?

8 A. Making sure that they reported the
9 loss to -- you know, to the State Board and to
10 the DEA, yeah.

11 Q. Okay. Did you or anyone at DDM
12 train those supervisors or chief pharmacists
13 regarding their reporting obligations under the
14 CSA?

15 A. They were trained -- I'm sure that
16 that was part of their training.

17 Q. You're just talking about generic
18 pharmacist training?

19 A. Yeah.

20 Q. Okay. So nothing specific at DDM?

21 A. Well, they knew that -- sorry.
22 They knew that they had to report a 106, and
23 then due to the State Board of Pharmacy coming
24 to our annual meetings and e-mails that we sent

1 out to the stores, that they should be reporting
2 any thefts to the State Board and 106s whenever
3 it occurred.

4 Q. So obviously I think you'd agree
5 with me that you don't know what pharmacists
6 knew, right, necessarily? Because they would be
7 the only ones who could tell us about that,
8 right?

9 Do you --

10 A. We got a copy of the 106, so ...

11 Q. Right.

12 A. You know.

13 Q. You can't emphatically state here
14 right now that every pharmacist in your stores
15 ever has always known exactly what the reporting
16 requirements were, right?

17 A. That was part of their -- part of
18 the State Board regulations, right?

19 Q. Okay. So --

20 A. So ...

21 Q. -- what I'm specifically asking
22 you is, did DDM's pharmacy department provide
23 training to pharmacy employees to school them or
24 educate them on their reporting obligations

1 under the CSA. And if you didn't, it's -- I
2 mean --

3 A. I would have to go back and
4 review. I mean --

5 Q. Okay. So you don't recall ever
6 putting on a training like that?

7 A. I don't recall, no.

8 Q. What can you tell me about Heather
9 Gall that you haven't already told me?

10 A. I believe that Heather Gall was
11 caught in taking the pills and terminated at
12 that point or shortly thereafter, sometime in
13 the near future.

14 Q. When you say "taking," you mean --

15 A. She was never really an abusive
16 pharmacist prior to this point. I think that
17 after this all occurred, and in her statement,
18 there was something about she had back pain and
19 was put on prescribed medication, and so her
20 reasoning then -- I don't recall whether or not
21 this was the specific case, but one of these
22 cases they said, "I didn't have my pills with
23 me, so I, you know, kind of swapped for this or
24 that."

1 Q. That's illegal, right?

2 A. Yeah. Yes.

3 Q. Okay. That's diversion?

4 A. Yes.

5 Q. Okay. And that was diversion
6 committed by one of DDM's pharmacists, right?

7 A. Yes.

8 Q. Okay. So we've got Eric,
9 pharmacist, he was an addict. And we've got
10 Heather, we don't know what was happening there,
11 but she was actually taking drugs out of a DDM
12 store and taking them herself, correct? Which
13 would suggest that she was also an addict,
14 correct?

15 A. The reason I'm hesitating, you
16 know, defining an addict at this particular
17 case -- she was on the medication.

18 Q. Okay. Fair enough. I gotcha.
19 You don't know that she had an
20 addiction?

21 A. Right.

22 Q. But you know that she stole pills
23 and took them?

24 A. Yes.

1 Q. Okay. Remember we were talking
2 about that drug screening thing earlier?

3 A. Yes.

4 Q. Do you know whether it was in
5 place as of November of 2013?

6 A. I don't recall exactly when it was
7 implemented, but it was around that time period.

8 - - -

9 (DDM-Nameth Exhibit 16 marked.)

10 - - -

11 Q. Okay. Well, let's look at
12 Exhibit 16, which is DDM421435. This is an
13 e-mail from John Glinski to Pete, yourself,
14 Jason Briscoe, and the Gregory Steinkerchner
15 again. Who is John again?

16 A. John Glinski is a loss prevention
17 representative.

18 Q. Okay. So this is dated October 2,
19 2014. It's a little less than a year later.
20 Subject is "Suspended employee pharmacist
21 Datkuliak DDM 48."

22 Do you know who that is?

23 A. Yes.

24 Q. Who's that?

1 A. Susan Datkuliak was a pharmacist
2 at our store 44 in south Ohio somewhere.

3 Q. Okay. So this says, "I had to
4 split this report in two e-mails as I did not
5 realize it did not send earlier today."

6 Do you recall getting two e-mails
7 about this?

8 A. No.

9 Q. Okay. I only ask because I only
10 got one.

11 All right. It says, "Janet, I
12 suspended this employee on 8/31/14. She is the
13 pharmacy chief at 44."

14 Right?

15 A. Yes.

16 Q. Okay. And it says, "Pharmacy
17 operations, I wanted everybody to be on the same
18 page as we discuss this so I am sending
19 everybody the same report that I made and sent
20 to Janet."

21 Right?

22 A. Yes.

23 Q. And then it says, "Let's please
24 talk about what the next move is going to be."

1 Do you see that?

2 A. Yes.

3 Q. Were there policies and procedures
4 in place at that time that would dictate what
5 the next move would be in a circumstance like
6 this?

7 A. I believe this particular case was
8 not a drug diversion. I thought it was a theft
9 of something else in the store.

10 Q. Okay. What do you believe that
11 this chief pharmacist stole?

12 A. I don't recall what it was.

13 Q. It could have been a controlled
14 substance, though, you're just not sure?

15 A. It's possible, but something tells
16 me that that's not what the issue here was.

17 Q. Where are you getting that from?

18 A. From my poor memory.

19 Q. Okay. So you're not sure whether
20 it's -- whether it's diversion or just a theft
21 of a candy bar?

22 A. Correct.

23 Q. Okay. And we would need to go and
24 look at your files regarding store diversions to

1 see whether this is one of them?

2 A. Yes.

3 Q. Okay. All right. And then it
4 says, "I need to go back to 44 to talk to a
5 pharmacy tech who wanted to talk to me about
6 issues and suspicions of Datkuliak from the
7 past. She approached me on 8/31/14, but I did
8 not have time to talk to her."

9 Do you see that?

10 A. Yes.

11 Q. Okay. So it looks like there's a
12 pharmacy tech at 44 that has suspicions about
13 what Datkuliak is up to, right?

14 A. Yes.

15 Q. And this pharmacy tech tried to
16 talk to John Glinski on August 31 of '14, but he
17 didn't have time for her, right?

18 A. At that point, yes.

19 Q. Okay. And this e-mail is dated
20 October 2, 2014, so over a month later, and he's
21 saying that he still hasn't gone back to talk to
22 this pharmacy tech, right?

23 A. Yeah. And that's --

24 Q. Is that concerning to you, that

1 this pharmacy tech has suspicions about a chief
2 pharmacist and nobody at corporate has spent any
3 time trying to figure out what that might be?

4 A. Well, the reason that it sticks
5 out in my mind is, you know, I knew of her
6 because I think I interviewed -- I was in the
7 process of interviewing her. And when this came
8 up, it was -- I don't believe it was drug
9 related. I think it was something else in the
10 store. That's what's reminding me of that fact.

11 Now, I could be wrong, but I'm
12 fairly certain that this is with reference to a
13 non-controlled drug issue.

14 Q. Okay.

15 A. I'm not saying there's not an
16 issue, but ...

17 Q. Right. But you don't know for
18 sure, right? We'll need to do --

19 A. I'm not going to bet my retirement
20 savings on it, no.

21 Q. Smart man.

22 Let's go to Exhibit 17.

23 - - -

24 (DDM-Nameth Exhibit 17 marked.)

1 - - -

2 BY MR. MULLIGAN:

3 Q. This is DDM171919. We're going to
4 start on the second page. This is an e-mail
5 from Leslie Arend to Jason, yourself, and Pete.

6 Do you know what this is
7 generally?

8 A. Yes. Leslie was a representative
9 from Cardinal, our representative from Cardinal,
10 and this approaches -- it's notifying that
11 they're approaching that threshold limit on
12 oxycodone.

13 Q. Okay.

14 A. Those particular stores.

15 Q. And so -- and I know this from
16 other testimony, but just correct me if I'm
17 wrong. When the switch to Cardinal was made,
18 Cardinal imposed thresholds on DDM's stores,
19 correct?

20 A. Correct.

21 Q. And then when a store would be
22 nearing its threshold, they would send an e-mail
23 to you guys saying, "Hey, this store is getting
24 close to their threshold or they went over it

1 and we cut the order and reported it."

2 Right?

3 A. Correct.

4 Q. All right. So would it be common
5 when you get an e-mail like that that you would
6 forward that e-mail to the store pharmacist to
7 let them know they were getting close to their
8 threshold?

9 A. It was a common occurrence, yes.

10 Q. Okay. And so if you look above
11 here, this is actually you forwarding this
12 e-mail to Tom Pfefferle, Deb Fritz -- it looks
13 like those are probably pharmacists at a
14 particular store?

15 A. Yeah. Those two were at store 14.

16 Q. Okay.

17 A. The other two were at store 76.

18 Q. Okay. And you said that, "The
19 store is approaching the limit. Please read
20 below."

21 Right?

22 A. Yes.

23 Q. All right. And were you supposed
24 to share the threshold limits with the

1 individual stores?

2 A. I don't think it was anything that
3 Cardinal made us do at the time that I'm aware
4 of.

5 Q. Okay. You can't think of any
6 reason why it might be a bad idea to share those
7 thresholds with the stores?

8 A. I think it's informing them of
9 where they stand. You know, being an informed
10 person is better than not being -- is better
11 than being uninformed.

12 Q. Wouldn't you agree that if you
13 told them what the threshold was, it would allow
14 them to order the maximum amount without
15 generating a suspicious order that would get cut
16 and be reported to the DEA?

17 A. That doesn't specifically tell
18 them what their threshold was. It just says
19 that they met -- they were within 85 to
20 95 percent of the threshold. But I don't
21 think -- or I don't know. Does it say in there
22 that they're a specific number?

23 Q. Well, I'll admit that this e-mail
24 is formatted sort of in an odd way. I think

1 that if you look at the last page, if you go
2 about halfway down, it looks like oxycodone
3 has -- they were at 20,100 and their limit was
4 probably 26,000, if the percentage works?

5 MR. JOHNSON: Second to last page
6 you mean?

7 MR. MULLIGAN: The last page at
8 the bottom. Oh, yeah. I'm sorry.
9 Second to last page.

10 A. Okay. All right.

11 Q. Do you see that?

12 A. Yes.

13 Q. So that would suggest that you've
14 actually forwarded and shared with them what
15 their threshold is, right?

16 A. Okay.

17 Q. But you don't see anything wrong
18 with that? Or let me ask the question
19 differently.

20 That was not an issue, right?
21 That was something that was common?

22 A. Yes.

23 Q. Okay. All right. Let's go back
24 to the second page. So Karla Bartish -- who's

1 that?

2 A. She's a pharmacist at one of the
3 Columbus stores.

4 Q. Would it have been 14 or 76?
5 Because it was -- she wasn't on this original --

6 A. 76 probably.

7 Q. Okay. So maybe one of these
8 people forwarded it to her, you think?

9 A. Okay.

10 Q. So she says to you -- she changed
11 the subject, and it says -- instead of saying
12 "Store 14, 76," it now says, "Living on the edge
13 baby."

14 Do you see that?

15 A. Yes.

16 Q. Was she kind of a jokester?

17 A. Yes.

18 Q. Okay. I know that type. Because
19 I am one.

20 Okay. So she says, "Hi Tom. Is
21 there a way to increase the threshold? We seem
22 to just barely stay under the limit lately.
23 Thoughts? Thank you."

24 Right?

1 A. Yes.

2 Q. And would you agree, based on her
3 subject that -- the subject she chose, that she
4 doesn't necessarily grasp the gravity of either
5 the opioid crisis or diversion?

6 A. I think she's really looking at
7 maintaining good patient rapport and having
8 medication on hand for patients that need pain
9 management. I think that there are reasons --
10 see, these particular stores took a while to
11 grow, but they were growing in the Columbus
12 market because we were new to that market.

13 Q. Okay.

14 A. So as their overall volume of
15 scripts increased, you know, they had to have --
16 she's asking, "Isn't there any way to increase
17 the threshold, because I'm consistently running
18 out of product?"

19 Q. Right.

20 A. So I'm sure if someone was going
21 to come up to them that's in pain, they don't
22 have the product, it's an issue.

23 Q. Similarly, she's representing that
24 their in pain, right?

1 MR. JOHNSON: Objection.

2 Q. Would you agree?

3 A. Well, they've got a prescription,
4 so they've also -- the doctor agrees that
5 they're in pain.

6 Q. Well, at least the doctor is
7 willing to write them a prescription? That's
8 all we really know, right?

9 MR. JOHNSON: Objection.

10 Q. You've heard of pill mills,
11 haven't you?

12 A. Yes.

13 Q. Okay. So we don't -- we don't --
14 I'm just saying, you're assuming those facts and
15 I'm just pointing out that we don't know whether
16 these people are in pain or not. Some of them
17 were illegitimate prescriptions, weren't they?

18 A. I have to assume that there could
19 be. There could have been.

20 Q. In fact, it's highly likely that
21 there were illegitimate --

22 A. Therefore the reference to the
23 policeman earlier, there having to be a
24 policeman for all these prescriptions.

1 Q. Okay. So my original question
2 was, do you think that she was sort of not
3 appreciating the gravity of diversion with her
4 subject "Living on the edge baby"?

5 A. No, I don't think that that's the
6 case. I don't think that points to the gravity
7 of situation. I think that she's more looking
8 at how she's going to be able to handle her
9 customers.

10 Q. Okay. And I read "living on the
11 edge" means she's right up against the threshold
12 every month living on the edge of that
13 threshold.

14 A. That's just -- she --

15 Q. You don't know?

16 A. It has nothing to do with the
17 context of the e-mail. That was her.

18 Q. Okay.

19 A. You know.

20 Q. Well, let's go to the next e-mail
21 where you respond, you say, "On a serious note,
22 what is the reason why you guys are hitting the
23 ceiling? In order to increase your limit, we
24 have to send Cardinal several reasons for the

1 sales volume."

2 Right?

3 A. Yes.

4 Q. And if you go to the next e-mail,
5 she writes back and she says, "Well, um, Rx
6 volume has increased and half of that increase
7 are narcs. Lol."

8 What are narcs? Are those
9 controlled substances?

10 A. She's referring to narcotics.

11 Q. So controlled substances --

12 A. Yes.

13 Q. -- like opioids?

14 A. Could be, yes.

15 Q. Do you know what "lol" means?

16 A. Yes.

17 Q. What does it mean?

18 A. Laugh out loud.

19 Q. Laughing out loud?

20 Okay. So she says, and -- "Rx
21 volume has increased and half of that increase
22 is narcotics. Ha ha," right? That's basically
23 what that is?

24 A. Yeah. And I don't know -- when

1 you're looking at it printed like this, is she
2 laughing because she's laughingly saying it's
3 half increased or is she -- or they really are
4 half increased.

5 Q. Or is it like, "Oh, my God,
6 they've increased"?

7 A. Well, who knows? I can't answer
8 that.

9 Q. Well, I'm just asking you how you
10 interpret it because you're the one who got it,
11 right?

12 A. Knowing Karla, it was just -- you
13 know, that was -- she's trying to be funny.

14 Q. Okay. Do you think Rx volume
15 increasing and half of that being an increase in
16 narcotics is funny?

17 A. No.

18 Q. Okay. And then she says,
19 "Seriously, patients have been switching from
20 Norco now to plain oxycodone. So those Rxs for
21 240 Norco are now 240 oxycodone. It's nuts,
22 Tom. These people aren't getting 120 or 90.
23 They're getting 360, 420, 500, and we need to
24 keep enough in stock so we don't get to the 0

1 stage."

2 Do you see that?

3 A. Yes.

4 Q. That's pretty concerning, isn't
5 it?

6 A. Yes.

7 Q. This shows that the incidence in
8 which people are getting opioids is going
9 through the roof, right?

10 A. Correct.

11 Q. And Karla thinks it's funny,
12 right?

13 A. Well, you have to understand
14 Karla. So --

15 Q. Well --

16 A. -- there are some people that
17 are -- you know.

18 Q. I mean, you can be a comedian, but
19 I don't think there's anything about the opioid
20 crisis that's funny, do you?

21 A. No, I don't, but -- you know, she
22 obviously -- in the last sentence that you
23 didn't highlight, she's referring to the ones
24 that they said hit the road, that they're not

1 filling.

2 Q. I didn't ask you about that
3 sentence yet. I'm going to. I'd rather that
4 you answer the question I asked.

5 It's not funny, is it?

6 A. It's not funny.

7 Q. Okay. And in fact, she said "it's
8 nuts," right?

9 A. Yes.

10 Q. And she's a pharmacist. Despite
11 the fact that she thinks it's funny, she does
12 also think it's nuts, right?

13 A. Correct.

14 Q. Do you think it's nuts?

15 A. I think it's very concerning.

16 Q. Okay. So these people are
17 switching over to opioids. And when it says,
18 "They're not getting 120 or 90, they're getting
19 360, 420, 500," are those quantities?

20 A. I would assume so.

21 Q. I mean, what else could it be?

22 A. Right. Yeah.

23 Q. Do you think it's appropriate for
24 a pharmacist to fill a prescription for 500

1 oxycodone pills?

2 A. No. What I'd like to see is, is
3 that true fact or is she being, you know, overly
4 zealous in her writing. I don't know.

5 Q. I mean, wouldn't you expect a
6 communication like this about the way that
7 opioids are flying out the door to be serious
8 and factually based from one of our pharmacists?

9 A. Yes. Again --

10 Q. I get being funny, but this is not
11 a situation where you're going to, you know,
12 throw a bunch of -- she's not going to blow
13 smoke at you, is she? This is --

14 A. No.

15 Q. This is happening, right?

16 A. I would assume, though, I can't
17 talk to the quantities of 500. To me, that
18 seems -- I can never think of a situation where
19 somebody is going to get 500, but ...

20 Q. All right. That's a good point.
21 Let me ask about that.

22 So what is the largest quantity
23 that would be appropriate to fill for an
24 oxycodone prescription at one given time?

1 A. Let's assume that they're taking
2 eight a day, so 360, around the 400 mark would
3 be, you know --

4 Q. So 360 is the absolute max and
5 that's if you're taking eight a day?

6 A. Now, are they getting -- are these
7 three-month supplies?

8 Q. Answer the questions that I -- I
9 think there's a question pending.

10 A. Okay.

11 Q. Do you want me to repeat it?

12 A. Yeah, please.

13 Q. So -- okay. So I want to just
14 make sure I'm clear. You're telling me as a
15 pharmacist that the largest permissible
16 prescription that anyone could have for
17 oxycodone or that you would want your pharmacist
18 filling would be 360 tablets?

19 A. For a month's supply.

20 Q. Okay. So anything above 360 would
21 be too much, right?

22 A. If the PBM allows a 90-day supply,
23 then --

24 Q. Did it?

1 A. Did it? I don't know.

2 Q. Do you know whether your
3 pharmacists were permitted to give more than a
4 30-day supply?

5 A. Probably not, no.

6 Q. Okay. Did DDM have any policies
7 and procedures in-house that told pharmacists
8 what the maximum amount of opioids was that they
9 could fill in a particular prescription?

10 A. We did not have anything in the
11 policy, no.

12 Q. Okay. But 360 would be the
13 absolute end all, right?

14 A. I would say that's getting to the
15 point where anything more than that, you would
16 have to really justify it. If they were taking
17 multiple doses at bedtime as opposed to so many
18 during the day and then another two doses at
19 bedtime, it could kick it up a little bit higher
20 but, you know, that's a large quantity.

21 Q. So is it fair to say that you
22 don't know the exact maximum amount of
23 hydrocodone that a person can take safely?

24 A. It depends on the prescription.

1 Q. That a person can take safely?

2 A. It depends on the prescription and
3 the person. Typically, the problem that we're
4 seeing in this country is in order to gain the
5 same pain management that you got when you're
6 starting off, the physicians were usually on an
7 upward curve to if they didn't control their
8 pain with one pill a day, they would up it to
9 two pills a day.

10 Q. Because people were --

11 A. Two pills four times a day.

12 Q. -- they were developing a
13 tolerance?

14 A. A tolerance would develop. And
15 somebody that took four a day versus ten a day
16 would strictly depend upon the tolerance of that
17 drug. So it's a fluid situation.

18 Q. Okay. Let's go to your response.
19 You said, "Who are the prescribers? Are they
20 reliable? If questionable, have we notified the
21 Board?"

22 Do you see that?

23 A. Yes.

24 Q. And then she responds. She said,

1 "Here are the main ones." There's four of them,
2 right? Right?

3 A. Okay.

4 Q. And one of them is Gordon Korby.
5 Do you see that?

6 A. Yes.

7 Q. And it says, "Has been
8 investigated but no action by Board."
9 Right?

10 A. Yes.

11 Q. Do you know whether any of these
12 other pharmacists or doctors lost their DEA
13 licenses?

14 A. I don't know that.

15 Q. Okay. Did you ever do anything to
16 investigate these doctors?

17 A. No.

18 Q. Do you know whether Karla did?

19 A. Other than contacting the State
20 Board?

21 Q. Well, you asked her who the
22 prescribers were that were giving the
23 prescriptions in these large quantities down
24 here.

1 A. Yes.

2 Q. And these are the names she gave
3 you, right?

4 A. Okay.

5 Q. But you didn't research those
6 doctors, and I'm asking if you know whether she
7 did?

8 A. Typically something like this
9 would -- I assume she contacted the State Board
10 on them because she's got an answer on the one
11 that they're being investigated, but the board
12 has not actually come in and taken their license
13 away. So for her to answer that question --

14 Q. But I mean, you don't know,
15 though, right? You're speculating?

16 A. Yeah.

17 Q. Okay. I just want to know what
18 you know, that's all.

19 All right. So in the response
20 that you give, you say, "As we discussed at the
21 meeting, I would start to pare down those coming
22 to your store from outside your immediate area."

23 And we talked about that earlier,
24 right?

1 A. Yes.

2 Q. That's something that you
3 encouraged pharmacists to do?

4 A. Correct.

5 Q. And it says, "I would run a report
6 to see who those people are and notify them of
7 the new store policy in advance so there will be
8 surprise" -- I assume you meant "no surprises at
9 the Rx counter."

10 Right?

11 A. Correct.

12 Q. Okay. But you didn't instruct her
13 here that she shouldn't be filling prescriptions
14 of that size, right?

15 A. Correct.

16 Q. And you didn't tell her that she
17 should investigate these doctors, right?

18 A. No.

19 Q. And you didn't tell her that she
20 should report these -- either these
21 prescriptions or these doctors to the board or
22 the DEA, right?

23 A. I did not instruct her to do that.

24 Q. Okay. Exhibit 18.

1 - - -

2 (DDM-Nameth Exhibit 18 marked.)

3 - - -

4 BY MR. MULLIGAN:

5 Q. And this is DDM174146. We're
6 going to start on the second page, which is the
7 beginning of the e-mail string, at the bottom.
8 This is from Michele Golob to Pete and yourself.

9 Do you see that? It's down at the
10 bottom.

11 MR. JOHNSON: Right down here at
12 the bottom.

13 A. Oh, okay.

14 Q. It's the second page.

15 A. Okay.

16 Q. Got it?

17 A. Yes.

18 Q. And it says, "Subject: 34." I
19 assume that's store 34, right?

20 A. Yes.

21 Q. "34 called me yesterday late
22 afternoon stating they were short 60 generic
23 Percocet. This now brings a total to 100
24 missing in the past month."

1 Do you see that?

2 A. Yes.

3 Q. Okay. And if you go to the last
4 page, it says, "Both have offered to do a drug
5 test if we want them to, specifically Vern. He
6 wants to make sure his name is cleared, and he
7 says he did not take any of them."

8 Do you see that?

9 A. Yes.

10 Q. And this would have been prior to
11 the drug screening going into place, right?

12 A. Correct.

13 Q. If you go up to the second e-mail,
14 Pete wrote, "At which point do we want to notify
15 OSBP and DEA."

16 Right?

17 A. Yes.

18 Q. And so it sounds like what he's
19 sort of showing us is that DDM didn't have a set
20 firm policy about what time frame OSBP or DEA
21 needed to be notified regarding certain issues,
22 right?

23 A. Yes.

24 Q. Okay. And then it says, "Scott

1 has told repeatedly to notify them when we
2 uncover a loss or suspect one. I don't want to
3 jeopardize our relationship with the DEA since
4 they have been imposing heavy fines for a
5 variety of infractions."

6 Do you see that?

7 A. Mm-hmm.

8 Q. So Scott, is that Scott Brinks
9 from the DEA?

10 A. I assume.

11 Q. Okay. So it sounds like Scott's
12 repeatedly telling you guys that you have to
13 notify them when you uncover a loss or even a
14 suspected loss, right?

15 A. That's what it states.

16 Q. Okay. But Pete's saying he
17 doesn't want to bug him because you guys have a
18 good relationship; is that fair? And because
19 they're imposing heavy fines?

20 A. Yeah.

21 Q. Okay. If you go further up, we're
22 going to skip the Glinski e-mail. There's one
23 from Pete to John, Michele, you, and Buddy. And
24 who's Michele Golob?

1 A. Supervisor.

2 Q. Okay. So Pete says, "I'm more
3 worried about the DEA. They have issued over
4 8 million in fines against primarily the big
5 chains."

6 Do you see that?

7 A. Yes.

8 Q. So it sounds like you guys weren't
9 really underneath the microscope at that point,
10 right?

11 A. I assume so, yeah.

12 Q. Okay. They have been targeting
13 either poor policies and procedures
14 surrounding" -- I assume that's controlled
15 substances, CS?

16 A. Mm-hmm.

17 Q. "Tom is participating in a CDC
18 task force regarding this and failing to comply
19 with reporting requirements."

20 Do you see that?

21 A. Yes.

22 Q. So it looks like you guys are
23 aware the DEA is targeting poor policies and
24 procedures and failure to comply with the

1 reporting requirements, right?

2 A. Correct.

3 Q. And it also sounds like Pete
4 Ratycz is concerned about the DEA in light of
5 that, right?

6 A. Yes.

7 Q. Okay. Were you concerned at that
8 time?

9 A. We were concerned and -- as
10 anybody would be that -- you know, that we work
11 with the DEA very well. We wanted to make sure
12 we were in compliance with what they wanted us
13 to do.

14 Q. Okay. So then it says, "Six CVSS
15 in Oklahoma lost their DEA license in January
16 for not reporting in a timely manner for a
17 period of six months."

18 Do you see that?

19 A. Yes.

20 Q. Okay. So essentially this e-mail
21 is saying, you know, we've got to figure out
22 when we've got to notify them, because if we
23 don't, something bad might happen and that might
24 be the DEA leveraging a fine, right?

1 A. But I don't know -- I don't know
2 if that's right. Are they referring to maybe an
3 ARCOS not reporting? It doesn't say --

4 Q. Well, the e-mail chain is talking
5 about --

6 A. Correct.

7 Q. -- loss.

8 A. Yes. I know that's what it is,
9 but was the incidents in Oklahoma, loss of DEA
10 license in January for not reporting in a timely
11 manner -- could he be referring to ARCOS? I
12 just don't know that.

13 Q. You would agree with me that DDM
14 didn't have a policy regarding how quickly you
15 needed to report loss or suspected loss,
16 correct?

17 A. Correct.

18 Q. Okay. Even though Scott Brinks
19 has repeatedly told you that you had to report
20 it when you uncovered either a loss or a
21 suspected loss, correct?

22 A. Once that became clear to us, I
23 think that's when -- at that particular time, we
24 wanted to make sure -- prior to this -- we

1 wanted to make sure that there was indeed a
2 loss. Once we found out from Scott that he
3 wanted to know right away, then we were --
4 started that procedure.

5 Q. Do you remember those DEA letters
6 that we looked at from 207 --

7 A. Yes.

8 Q. -- 2007?

9 A. Yes.

10 Q. They made it clear that you had to
11 report them as soon as you discovered them,
12 right?

13 A. They -- we were trying to
14 determine whether they were a loss before we
15 reported them.

16 Q. Okay. You guys read language into
17 that requirement that gave you leeway to
18 investigate before you reported, right?

19 MR. JOHNSON: Objection.

20 Q. That's fair, right?

21 A. I don't want to answer that
22 because I don't know if it's a fair question.

23 Q. You have to answer it.

24 A. Well, then I'm going to answer

1 that I don't -- I don't think it's fair.

2 Q. Well, I didn't ask you whether you
3 thought the question was fair. You still have
4 to answer the question.

5 A. Didn't you just ask me if it was
6 fair or not?

7 MR. JOHNSON: You did ask --

8 MR. MULLIGAN: That's a good
9 point. I did say that, didn't I?

10 MR. JOHNSON: Yeah.

11 MR. MULLIGAN: Well, foot in
12 mouth.

13 BY MR. MULLIGAN:

14 Q. Okay. So you don't think it's
15 fair?

16 A. No.

17 Q. Okay. And what don't you think is
18 fair?

19 A. Because at that point we were
20 notifying the DEA after we knew that there was a
21 loss.

22 Q. Okay.

23 A. It wasn't a suspected loss.

24 Q. So it's still your position right

1 now that --

2 A. No.

3 Q. Okay. Go ahead.

4 MR. JOHNSON: Wait. Let him
5 finish the question.

6 Q. It's still your position --

7 MR. MULLIGAN: It's getting late,
8 right?

9 MR. JOHNSON: Yes.

10 BY MR. MULLIGAN:

11 Q. It's still your position that you
12 did not have to report a loss until it was a
13 confirmed loss?

14 A. As I read this now and then, at
15 the time, yes, we did change our reporting to as
16 soon as we found out.

17 Q. So even --

18 A. So that's what they wanted.

19 Q. Even a suspected loss should be
20 reported when discovered?

21 A. That's what we were doing.

22 Q. Okay. And you guys changed that
23 at some point?

24 A. Right.

1 Q. And would that have been in the
2 2013 time frame?

3 A. Late.

4 Q. Okay. All right. So the next
5 page on the front, the bottom, Michele writes
6 back to you and Pete and says, "What is the time
7 frame to report the 106? Oftentimes we are
8 looking into things, doing counts. A few days
9 after first discovery? Weeks?"

10 Do you see that?

11 A. Yes.

12 Q. So she's a regional pharmacy
13 supervisor, and I believe you told me that they
14 were trained and responsible for overseeing
15 reporting, but it looks like she doesn't even
16 know when she was supposed to report; is that
17 fair?

18 A. Once the 106 was done, they would
19 send it in, but what your question is, is when
20 do you do it? Is that what the question is?

21 Q. Yeah. Well, and part of reporting
22 is when, right, when and what?

23 A. Yes.

24 Q. So Michele doesn't have any idea

1 whether she needs to report within a few days
2 after the discovery or a few weeks --

3 A. Correct.

4 Q. -- right?

5 A. Correct.

6 Q. Okay. And in realty, it's within
7 a day of discovery, right?

8 A. Yes.

9 Q. Okay. So both of her suggested
10 answers are incorrect, right?

11 A. Yes.

12 Q. Okay. So Pete writes back and
13 goes, "Technically, it's the time you identify
14 an error."

15 So Pete knows the right answer,
16 doesn't he?

17 A. Yes. As Scott Brinks had referred
18 to him to do, yes.

19 Q. Okay. Do you know why he used the
20 word "technically"?

21 A. I don't know why he would use
22 that.

23 Q. Usually in common parlance that's
24 followed with a, but in practice we do the

1 following, right?

2 A. It's conveyed that.

3 Q. So he then says, "The DEA would
4 argue that it should not take the store weeks to
5 determine if a Rx was not logged on a perpetual
6 inventory sheet."

7 Right?

8 A. Yes.

9 Q. And in fact, we know the DEA wants
10 to know about it immediately, right?

11 A. Well, it's a little confusing
12 because perpetual inventory sheet and something
13 logged in is not commensurate to what we have to
14 turn in to DEA. So let me read this a little
15 bit closer.

16 Q. I'm just referring back to
17 Scott's -- the statement about what Scott said.

18 A. Yes. Okay. Yes.

19 Q. All right. And then if you go
20 above, it looks like Michele -- neither Michele
21 nor Jen had actually done it. And she said that
22 she was going to go back and do it.

23 Do you see that at the top?

24 A. Yes.

1 Q. Okay. So that one fell through
2 the cracks, right?

3 A. Yes.

4 Q. We're on Exhibit 19, which is DDM
5 48217.

6 - - -

7 (DDM-Nameth Exhibit 19 marked.)

8 - - -

9 BY MR. MULLIGAN:

10 Q. And I'll just represent this is a
11 piece of that last e-mail chain, but it's just
12 got one extra response at the top. So we're
13 just going to look at the top part.

14 So Michele writes back and she
15 says, "Jen did not do a 106 for the initial 40
16 due to taking counts and still investigating.
17 She will submit that one today. I will give --
18 have her submit the 60 by the end of the week
19 since it looks like nothing is turning up
20 again."

21 Do you see that?

22 A. Yes.

23 Q. So despite this chain about
24 reporting things when found, they're still

1 taking their time to report stuff, aren't they?

2 MR. JOHNSON: Objection.

3 A. Yes.

4 Q. Okay. All right. We're going to
5 look at 21 -- I'm sorry. 20. Which is
6 DDM427343.

7 (DDM-Nameth Exhibit 20 marked.)

8 - - -

9 BY MR. MULLIGAN:

10 Q. This is an e-mail about a month
11 later from Michele to Pete and yourself.

12 Do you see that at the bottom?

13 A. Yes.

14 Q. And she says, "Do we want to
15 implement chain wide asking for a valid ID at
16 the time of drop off/pickup for all controlled
17 substances."

18 Do you see that?

19 A. Yes.

20 Q. What would be the benefit of
21 asking for a valid ID when picking up drugs?

22 A. Well, so that the patient -- it's
23 the right patient that you're handing the
24 medication to.

1 Q. So you can identify it's the right
2 person, right?

3 A. Right.

4 Q. You can identify whether they are
5 shopping outside their geographical area, right?

6 A. Well, the prescription itself
7 would have the address of the patient, right?

8 Q. You tell me.

9 A. Yes.

10 Q. Okay.

11 A. So that --

12 Q. But the ID would help you verify
13 that information, too, right?

14 A. It would be an actual bonus, yes.

15 Q. Okay. Is there any other reason
16 why asking for an ID would be important, or is
17 it really just to confirm who they say they are?

18 A. Well, it may be a deterrent to
19 someone picking it up that they have to show
20 their driver's license or some other ID with a
21 picture on it that they may not want to do that.

22 Q. So it would be something that
23 could potentially be put in place, could help
24 deter diversion?

1 A. Possibly.

2 Q. Okay. And this -- she says that
3 number 21 already has this in place, it looks
4 like. And I want to know, at that time was
5 asking for a valid ID part of DDM's suspicious
6 order monitoring policies?

7 A. No.

8 Q. Okay. Could it have been easily?

9 A. Yes.

10 Q. Okay. So Pete responds at the
11 top, and he says, "I don't want it to
12 inconvenience customers. We don't have that
13 luxury."

14 Right?

15 A. Correct.

16 Q. So Michele is saying, we should
17 have a valid -- we should have a chain wide
18 policy where you have to get a valid ID, and
19 you've told me that that would help prevent
20 diversion, correct?

21 A. It would be a helpful tool.

22 Q. Okay. And Pete's saying no,
23 because he doesn't want to inconvenience
24 customers, right?

1 A. Well, the problem is, if you
2 institute a policy like that and the patient --
3 whoever is picking it up does not have to be the
4 patient in the State of Ohio.

5 Q. Okay.

6 A. If they're sick and in bed,
7 someone is going to come in and pick it up for
8 them. And if -- they're not going to have an ID
9 that matches the prescription. So it creates a
10 problem. And, you know, it's all well and good
11 in theory and, you know, but it's really
12 problematic in carrying that out.

13 Q. Okay.

14 A. Because I know plenty of
15 circumstances where people that are not the
16 patient is picking it up.

17 Q. So at least in this instance, you
18 guys opted for customer convenience over a
19 stronger diversion plan, right?

20 A. No. We had -- we asked them to
21 give another form of identification, so to
22 speak, and that was a birth date.

23 Q. So you had to give a birth date
24 for the person who the prescription was for?

1 A. Yes.

2 Q. Okay. How would that prevent the
3 person who was there from improperly taking that
4 prescription and diverting it?

5 A. It wouldn't. And it wouldn't --
6 even if it was the person that was prescribed,
7 you're not going to prevent them from diverting
8 it.

9 Q. Did you ever have an instance
10 where a customer showed up at a store to pick up
11 a prescription that had already been filled and
12 given to somebody else?

13 A. Yes.

14 Q. Okay. And because presumably that
15 person just knew that their family member's
16 birth date was a certain day and they showed up
17 and gave that?

18 A. Well, we had that instance prior
19 to actually instituting the birth date. So
20 that's why we instituted the birth date, because
21 people were doing exactly that. So -- you know,
22 this was years ago. And so we implemented the
23 birth date. Now, is it possible that someone
24 could know that? Yes.

1 Q. Okay. Did DDM ever require that a
2 valid ID be presented?

3 A. Not corporately, no.

4 Q. Okay. Exhibit 23.

5 - - -

6 (DDM-Nameth Exhibit 21 marked.)

7 - - -

8 MR. KNOLL: Exhibit 21.

9 MR. MULLIGAN: Oh, I'm sorry.

10 Yeah, 21.

11 BY MR. MULLIGAN:

12 Q. This is P-DDM-0501. And there's
13 actually two pages here. And this says
14 hydrocodone shipments to BD2308155 from Discount
15 Drug Mart.

16 Do you know what that's referring
17 to?

18 A. It's their DEA license probably.

19 Q. So is that a store?

20 A. Yes.

21 Q. Okay. And I think we talked about
22 it earlier, you never looked at this type of
23 information to monitor usage over time, right?

24 A. Correct.

1 Q. Okay. Do you know which store
2 that is, Parma Heights?

3 A. Yeah, store 35.

4 Q. 35. Okay. We've actually seen
5 references to 35 in these documents, haven't we?

6 A. Yes.

7 Q. Okay. Was store 35 a problem
8 store?

9 A. I wouldn't specify it as a problem
10 store.

11 Q. Did you have problems with 35 and
12 opioids?

13 A. Well, through the documents that
14 we looked at, yes.

15 Q. Okay. And at no time did you look
16 at this report showing the amount of hydrocodone
17 that they were putting out into the public,
18 right?

19 A. No.

20 Q. Okay. You'd agree with me that
21 from -- prior to January 2002, there was almost
22 nothing that came out of that store, no
23 hydrocodone, correct?

24 A. Correct.

1 Q. And then starting in 2002, there
2 was a pretty significant spike in that first
3 year, right?

4 A. Well, what I don't see on this is
5 when the store was opened. And those types of
6 situations that would skew these numbers. When
7 did the store open up? I would have to look at
8 that information.

9 Q. Okay.

10 A. So how old the store is. I'm
11 thinking that the store -- relatively new store
12 would have opened around that time frame, so ...

13 Q. Okay. But you'd agree that
14 between, say, 2003 and 2015, the amount of
15 hydrocodone alone that they were putting into
16 the public quintupled, right? It was five times
17 larger, 5,000 to 25,000?

18 MR. JOHNSON: Objection.

19 A. Well, the problem you're -- in
20 seeing this, is that one of the spikes went up,
21 but in -- you know, if you look at all -- if you
22 fill in all the blanks here across the board
23 where it's going up and going down, if it goes
24 up and then comes down to the next level,

1 wouldn't you say an average is like halfway
2 between? So it's not really reaching that high,
3 but it's reaching high -- it's trending upward.

4 Q. I'm just looking at the order -- I
5 mean the orders themselves. I assume these
6 lines represent orders, correct? I mean -- or
7 do you not know? Or perhaps its --

8 A. Did this come from --

9 Q. It may have been monthly --

10 A. I don't know where this generated.

11 Q. It may have been monthly
12 quantities.

13 A. Okay.

14 Q. Obviously hard to count those
15 lines, but -- I mean --

16 A. Yeah. There -- it would have to
17 be monthly or every two months, because
18 there's -- are there 12 lines between -- I don't
19 think there's 12 lines between '02 and '03.

20 Q. Without counting those --

21 A. There might be six.

22 Q. Without counting those lines,
23 though, you'd agree that this could be
24 indicative of a problem, right?

1 MR. JOHNSON: Objection.

2 A. It's indicative of an increased
3 quantities.

4 Q. From a store that had documented
5 problems with diversion?

6 MR. JOHNSON: Objection.

7 A. It had documented problems.

8 Q. Okay. Let's turn to the second
9 page. This is the Euclid store. Do you know
10 what number that is?

11 A. I believe 35 -- no. 31.

12 Q. Was 31 a problem store?

13 A. I wouldn't classify it as a
14 problem store.

15 Q. Okay. What would you classify it
16 as? Was it an upper tier?

17 A. It was a busy store. It was --
18 upper tier of what? Oxycodone dispensing?

19 Q. Yeah.

20 A. It was a busy store, so any busy
21 store would have high dispensings of oxycodone.

22 Q. Okay. At some point, although
23 it's trending up for quite some time, it looks
24 like in about 2012, 2013, the trend started to

1 go down. Do you have any idea why that might
2 have happened?

3 A. I would think that it's due to the
4 reduced amount of oxycodone -- or
5 hydrocodones -- well, first of all, hydrocodone
6 went to Schedule II in 2014, so that's going to
7 reduce it automatically right there.

8 Q. Okay.

9 A. And then the volume that you -- I
10 mean the State Board had changes in the -- how
11 much you could dispense, was it a week supply or
12 so, those types of regulations have changed. So
13 there -- you're going to get a reduction
14 hopefully after 2014.

15 Q. Okay. So it took Ohio State Board
16 regulations to help stem this growth of
17 hydrocodone?

18 A. No, it took DEA regulations to
19 change it to a Schedule II.

20 Q. Okay. Did the thresholds that
21 Cardinal imposed on the DDM stores have anything
22 to do with the amount of hydrocodone that they
23 were putting out; do you know?

24 A. I can't answer that because I

1 wasn't around during that -- I was not --

2 Q. So you were -- once that Cardinal
3 came in and thresholds were published, you were
4 gone?

5 A. Oh, Cardinal. I'm thinking when
6 we went to someone else.

7 MR. JOHNSON: You're talking over
8 each other again, so ...

9 Q. Go ahead.

10 MR. JOHNSON: Got to help Carol
11 out.

12 MR. MULLIGAN: Sure.

13 BY MR. MULLIGAN:

14 Q. So were you at DDM when Cardinal
15 started providing hydrocodone to DDM stores?

16 A. Yes.

17 Q. Okay. And do you recall that once
18 those thresholds were put in place, it was very
19 common for DDM store orders to get cut and
20 reported to the DEA as suspicious because they
21 exceeded the thresholds set by Cardinal?

22 A. No.

23 Q. It was not common?

24 A. No.

1 Q. Okay. Did it happen every month?

2 A. No.

3 Q. How often would it happen? Every
4 month how many stores would have their orders
5 cut and reported, on average?

6 A. One or two, possibly.

7 Q. Okay. All right. Was there ever
8 a time where you guys designed or developed or
9 implemented a more aggressive controlled
10 substance monitoring policy?

11 A. When we instituted the six-week
12 average.

13 Q. Okay.

14 A. That was an add-on to the 12-month
15 policy that was originally in place.

16 Q. And you're talking about the
17 report that Jill Strang was responsible for?

18 A. Yes.

19 Q. Do you know when that was?

20 A. I don't.

21 Q. Was there anything else that was
22 done to strengthen DDM's suspicious order
23 monitoring policies and procedures?

24 A. Not that I recall.

1 Q. Okay. We'll look at Exhibit 22,
2 which is DDM169025.

3 - - -

4 (DDM-Nameth Exhibit 22 marked.)

5 - - -

6 BY MR. MULLIGAN:

7 Q. This is an e-mail from Pete to
8 Scott Brinks. He was at the DEA, right?

9 A. Yes.

10 Q. Okay. And you were copied on
11 this, weren't you?

12 A. Mm-hmm.

13 Q. And this is October --

14 A. Yes.

15 Q. -- 23, 2013?

16 A. Correct.

17 Q. And the subject is "Controlled
18 substance monitoring."

19 Do you see that?

20 A. Yes.

21 Q. All right. It says, "Scott, Tom
22 Nameth, director of pharmacy, attended the DEA
23 distributor conference in Maryland yesterday.
24 We are in the final process of implementing a

1 more aggressive controlled substance monitoring
2 system handling, dispensing and reporting at
3 store level and corporate."

4 Do you see that?

5 A. Yes.

6 Q. Do you know what he's talking
7 about?

8 A. Yes.

9 Q. What is it?

10 A. Well, what he's referring to is
11 when I went to the DEA distribution in Maryland,
12 but as far as his more aggressive controlled
13 substance, he was trying -- the reason we went
14 to the DEA conference was we were trying to ask
15 the DEA, "What exactly do you want us to do that
16 we're not doing?"

17 And so Pete was aware of that, and
18 he is waiting for a return visit. I attended
19 with P.J. Ferut, and the two of us went there
20 because obviously she would have to institute
21 the new -- a new program if we were going to do
22 so.

23 Q. Was a new program ever instituted?

24 A. No.

1 Q. Okay. So a more aggressive
2 controlled substance monitoring system was never
3 implemented?

4 A. Correct.

5 Q. Okay. Even though this e-mail
6 indicates that it was in the final process,
7 right?

8 A. I'm trying to find where that
9 states.

10 Q. Second sentence.

11 A. Oh, we're in the final process?
12 Unless he is in reference to the Chain Drug
13 Consortium that was mentioned earlier in here
14 that we were looking to aggressively change our
15 controlled drug policy.

16 Q. But this more aggressive
17 monitoring system was never put in place, as far
18 as you know, right?

19 A. Correct.

20 Q. Okay. Is there a reason why you
21 guys were asking the DEA for guidance on your
22 monitoring system in 2013 and didn't do it
23 before that?

24 A. No. But even after attending this

1 conference, they never really spelled out what
2 methodology they really wanted us to do. It was
3 mentioned during this conference, "What are you
4 doing about all the prescriptions that we're
5 seeing? You know, it's somebody's job to
6 monitor the doctors and all the scripts that
7 we're seeing."

8 That's -- that's the source of
9 what -- we're filling their orders. Is anybody
10 monitoring the doctors? Is the AMA? Is the
11 DEA? And their answer was no.

12 Q. All right. We're on 23 now, which
13 is DDM31931.

14 - - -

15 (DDM-Nameth Exhibit 23 marked.)

16 - - -

17 BY MR. MULLIGAN:

18 Q. And just to confirm, you guys
19 never put your substance -- Controlled Substance
20 Monitoring Policy in writing, correct?

21 A. Correct.

22 Q. All right. So this is an e-mail
23 from Ed McGinley and you're on the to line on
24 December 2, 2013.

1 Do you see that?

2 A. Yes.

3 Q. And there's a CDC Controlled
4 Substances Model Policy attached, and this is
5 from Ed McGinley, right?

6 A. Right.

7 Q. And he says, "Attached is a
8 substance model policy."

9 And then down below, he says, "It
10 is a comprehensive document intended to be used
11 as a template to construct controlled substance
12 policies or to evaluate and enhance existing
13 policies."

14 Right?

15 A. Correct.

16 Q. And if you turn to the next page,
17 there's the document he's referring to.

18 Do you see that?

19 A. Yes.

20 Q. What, if anything, did you do with
21 this document?

22 A. We reviewed it to see if it would
23 fit our model.

24 Q. Did it fit?

1 A. For the most part, yes, with small
2 tweaks in there.

3 Q. Okay. Did you change your
4 unwritten controlled substance monitoring policy
5 at all after seeing this document?

6 A. Not on a corporate level.

7 Q. Okay. Did you do it on a store
8 level?

9 A. No.

10 Q. Okay. So this didn't cause you to
11 change anything that you were doing, correct?

12 A. Correct.

13 Q. Okay. Did you ever provide a
14 document like this to a distributor if they
15 required evidence that you had a suspicious
16 order monitoring policy?

17 A. Yes. If they -- what we did, if I
18 remember correctly, in reviewing this -- this
19 was in late '13 -- we looked at this and
20 basically what a lot of this is, or most of it,
21 is what we currently were doing so that if
22 someone did ask us for a written policy -- if we
23 had a policy, this was already written in and it
24 matched what we were currently doing, so we

1 might have sent it out to them that would
2 specify what we did.

3 Q. So let me make sure I understand.
4 There's almost 30 pages of policy in this
5 document, right?

6 A. Right.

7 Q. And you're telling me that DDM did
8 everything that's listed in this?

9 A. In this particular one? No.
10 We -- according to Ed Ginley [sic], we could
11 modify it to fit our needs.

12 Q. Okay. I'm just -- I'm only asking
13 because you said you sent it out because it was
14 what you were doing. I just want to make sure
15 that --

16 A. Not they're -- not the CDC
17 document, because at this time that's what this
18 was, the Chain Drug Consortium's controlled
19 substances model.

20 Q. Okay. I'm going to hand you 24
21 now, which is DDM92440, and the attachment to
22 that is DDM91606.

23 - - -

24 (DDM-Nameth Exhibit 24 marked.)

1 - - -

2 BY MR. MULLIGAN:

3 Q. This is an e-mail dated a couple
4 months later, April 2, 2014, from Jill Strang to
5 Tony Devens, and the original e-mail is from
6 you. And I'll just represent to you that this
7 document on the back is the one that was
8 attached.

9 A. Right.

10 Q. And it looks strikingly similar to
11 the one we just looked at.

12 A. Yes, with some changes.

13 Q. And you would have provided this
14 to a distributor as evidence that you had a
15 suspicious order monitoring policy; is that
16 fair?

17 A. This would document what we did
18 for our policy.

19 Q. If there are differences between
20 this attachment and the one we just looked at,
21 who would have made these changes?

22 A. I probably would have.

23 Q. You would have? Okay. Would it
24 surprise you to learn that Jill Strang testified

1 that this was not Discount Drug Mart's
2 suspicious order monitoring policy?

3 A. It was never -- it was never
4 actually taken as a corporate policy. What it
5 did was show what we did during our policy. In
6 other words, rather than rewrite a telephone
7 book, everything in here after review was
8 something that we did. So we -- rather than
9 retype this, we used it as our template, changed
10 what we may not have done in the original to
11 what we did do in this --

12 Q. Okay.

13 A. -- and sent it to someone that
14 wanted that information.

15 Q. So if Ms. Strang testified that
16 there were certain things in there that never
17 happened, would she be wrong, or would that ...

18 A. I would be surprised. You know,
19 I -- you know, I -- there shouldn't be anything
20 in here that we didn't do.

21 MR. MULLIGAN: Okay. Let's do

22 20 -- I'm going to do this document.

23 - - -

24 (DDM-Nameth Exhibit 25 marked.)

1 - - -

2 BY MR. MULLIGAN:

3 Q. This is 25. This is DDM382315.

4 And this says, "DLSS Controlled Substance Client
5 Customers: Due Diligence Questionnaire."

6 Do you know what that is?

7 A. It's my writing, so I better know.

8 Q. I mean, if you don't remember,
9 it's okay. I was just trying to know what you
10 recall.

11 A. I don't recall it, but it's my
12 writing, so ...

13 Q. Okay. If you go to page 2 -- and
14 I suspect this is probably a distributor of some
15 sort asking you what your policies were as part
16 of the suspicious order monitoring obligation.

17 A. Okay.

18 Q. Would that be fair?

19 A. Yes.

20 Q. Okay. If you go down to number 9,
21 it says, "Is your company aware of DEA's Know
22 Your Customer policy?"

23 You said "Yes."

24 Do you see that?

1 A. Yes.

2 Q. And underneath that it says, "Does
3 your company have procedures in place for
4 adhering to the DEA's Know Your Customer
5 policy?"

6 And it says "Yes."

7 Do you see that?

8 A. Yes.

9 Q. And then it says, "We only sell to
10 our own retail locations. All pharmacies are
11 monitoring their patients for abuse potential."

12 Right?

13 A. Yes.

14 Q. And there's nothing in here that
15 says what DDM corporate is doing to monitor its
16 own people and to know its own pharmacists in
17 stores, correct?

18 A. Correct.

19 Q. And as we talked about earlier,
20 all you guys were doing in that respect was,
21 one, you knew who they were, or at least you
22 thought you did, and you knew that they had a
23 license, correct?

24 A. Mm-hmm, yes.

1 Q. Okay. And you also remember we
2 looked at that DEA letter which says that you
3 actually can't rely upon your pharmacists,
4 right? You have a corresponding obligation as a
5 distributor, correct?

6 MR. JOHNSON: Objection.

7 A. I think that, in my opinion,
8 referred to the stores themselves, of the
9 customers at the end --

10 Q. And we're splitting hairs on that,
11 but you'd agree that you can't rely on the store
12 to determine or prevent diversion, you have to
13 do it too, right?

14 A. Well, we're going to continue to
15 split hairs on that, because we knew our
16 customers.

17 Q. But you didn't, and you've
18 testified you didn't, because we went through a
19 whole pile of documents that show that DDM
20 employees, which included pharmacists, were not
21 only stealing drugs but they were addicted to
22 them, right?

23 MR. JOHNSON: Objection.

24 A. We were sending them to legitimate

1 locations, okay? So we can never be 100 percent
2 on any employee in any business. It doesn't
3 matter what you're doing; you have the potential
4 for theft.

5 Q. Okay. And we've identified one
6 way that you can weed out those bad people,
7 though, and that's through drug screening,
8 right?

9 A. That necessarily won't be
10 100 percent effective.

11 Q. But it's better than nothing,
12 isn't it?

13 A. Yes.

14 Q. Okay. All right. On page 4, you
15 actually attested that DDM is aware of and
16 complies with all laws and regulations enforced
17 by the DEA and applicable state authorities.

18 Do you see that?

19 A. Yes.

20 Q. And then you signed your name?

21 A. Yes.

22 Q. Do you know after you left whether
23 DDM's suspicious order monitoring policies were
24 ever put into writing?

1 A. I don't know that.

2 Q. Okay. Did DDM ever have reporting
3 to help it effectively identify outlier stores
4 or suspicious store ordering?

5 A. It never identified outlier
6 stores.

7 Q. Did it have effective reporting to
8 help you identify suspicious store ordering?

9 A. Part of our process was looking at
10 possible suspicious store ordering.

11 MR. MULLIGAN: Okay. This is
12 going to be 27, right? It's this one.

13 MR. JOHNSON: 26, I think.

14 MR. KNOLL: 26.

15 MR. MULLIGAN: 26?

16 MR. JOHNSON: Yeah, 26.

17 - - -

18 (DDM-Nameth Exhibit 26 marked.)

19 - - -

20 BY MR. MULLIGAN:

21 Q. This is DDM74952. This is an
22 e-mail from Pete Ratycz. This is actually dated
23 after you were probably well into retirement.
24 It's dated January 20, 2017. And I just wanted

1 to show you the second e-mail down here at the
2 bottom. It says, "Chris" -- do you know who
3 Chris Peshek is?

4 A. Yes, I do.

5 Q. Who's that?

6 A. Supervisor, store supervisor.

7 Q. Okay. "Chris, I think we need to
8 reemphasize our controlled substance program at
9 the upcoming pharmacist meeting. Also, we need
10 to look at developing reporting to help us
11 effectively identify outliers and/or suspicious
12 store ordering."

13 Do you see that?

14 A. Yes.

15 Q. So it looks as of January of 2017,
16 at least it's Pete Ratycz' opinion that DDM does
17 not have reporting to help it effectively
18 identify outlier stores and/or suspicious order
19 monitoring, correct? Suspicious ordering,
20 rather. Right?

21 A. At that time, we did not identify
22 outliers. It's questionable whether it was
23 suspicious store ordering. That's questionable.

24 Q. Well, Pete here is saying --

1 A. Yes, that's what he's saying, yes.

2 Q. -- in 2017 DDM still has to
3 develop reporting to help it effectively
4 identify outliers and suspicious store ordering,
5 right?

6 A. Correct.

7 Q. Which would mean that prior to
8 this it didn't have effective reporting to help
9 identify outliers and/or suspicious store
10 ordering, correct?

11 Would you disagree with Pete? Do
12 you think that DDM did have effective
13 reporting --

14 A. I think what he's referring to in
15 my opinion is increasing and improving the
16 system. The suspicious store ordering was
17 there, looking for an improvement on that
18 particular point, but also adding the outliers,
19 because we did not look at outliers.

20 Q. And we saw an e-mail earlier which
21 actually talked about making the suspicious
22 order monitoring policies more aggressive,
23 didn't we?

24 A. Yes.

1 Q. And nothing was done at that time,
2 right?

3 A. Correct.

4 Q. Okay. And so now, again, this is
5 about three to four years later, he's saying,
6 you know, we actually got to make this stronger
7 now, isn't he?

8 A. Yes.

9 Q. Okay. Is there any reason why it
10 couldn't have been made more effective in that
11 interim, that you know of?

12 A. Not that I know of.

13 Q. Did Cardinal ever require DDM to
14 change or do anything to its suspicious order
15 monitoring policies and procedures, that you
16 know of?

17 A. Require Drug Mart to change?

18 Q. Yeah.

19 A. They gave us the ability to change
20 levels.

21 Q. You mean to order Schedule II?

22 A. Yes.

23 Q. Okay. Would it be fair to say
24 that Cardinal handled Discount Drug Mart's

1 suspicious order monitoring regarding
2 hydrocodone at that time, from a distribution
3 level?

4 A. After 2014?

5 Q. Yes.

6 A. Yes.

7 MR. MULLIGAN: Now might be a
8 decent time to take a break, if you want
9 to take a quick break, and then I'll try
10 to finish up after that.

11 MR. JOHNSON: Okay. So like
12 another 15 minutes?

13 THE VIDEOGRAPHER: We're going off
14 the record at 4:01.

15 (Recess taken.)

16 THE VIDEOGRAPHER: We're back on
17 the record at 4:10.

18 - - -

19 (DDM-Nameth Exhibit 27 marked.)

20 - - -

21 BY MR. MULLIGAN:

22 Q. This is happening because I've
23 eliminated documents, which is a good thing.

24 A. That's fine.

1 BY MR. MULLIGAN:

2 Q. All right. This is Exhibit 27.

3 MR. JOHNSON: You're on camera,
4 you know.

5 THE WITNESS: Sorry. I'll control
6 myself.

7 BY MR. MULLIGAN:

8 Q. Exhibit 27, DDM55694. And while
9 he's handing it out, we were just discussing at
10 some point Cardinal sort of providing
11 hydrocodone, correct?

12 A. Yes.

13 Q. And when they did that, the
14 condition of providing hydrocodone was that they
15 required that -- or they insisted that DDM
16 stores have certain thresholds?

17 A. Correct.

18 Q. And that would be a maximum amount
19 that a store could order in a given month for a
20 variety of drugs or by drug family, right?

21 A. Unless they wanted -- a store
22 wanted to increase the threshold, they'd given
23 them some reason to do so.

24 Q. Okay. And they had to provide

1 some justification --

2 A. Yes.

3 Q. -- that would be indicative of
4 demand that was not necessarily tied to
5 diversion, right?

6 A. Correct.

7 Q. So a legitimate demand?

8 A. Yes.

9 Q. Okay.

10 MR. MULLIGAN: Do you have my
11 copy?

12 MR. KNOLL: I just gave it to you.

13 MR. MULLIGAN: Okay. You guys
14 didn't get a highlighted copy, did you?
15 Okay. Cool.

16 BY MR. MULLIGAN:

17 Q. All right. So if you look at the
18 bottom, this is an e-mail from you to Brandon
19 Wilkins.

20 Do you see that?

21 A. Yes.

22 Q. Who is Brandon Wilkins?

23 A. He's a -- our company
24 representative from Cardinal.

1 Q. Okay. And so he would be the
2 individual that you would interact with
3 regarding the products that Cardinal supplied to
4 DDM stores?

5 A. Yes, typically.

6 Q. Okay. And it says, "Hi Brandon,
7 since several stores have been notified about
8 their C-II orders being over the limit, is there
9 any way of knowing in advance what those monthly
10 limits are for select items such as morphine and
11 oxycodone."

12 Do you see that?

13 A. Yes.

14 Q. And it says, "The store
15 pharmacists are asking for it an effort to be
16 proactive."

17 Right?

18 A. Correct.

19 Q. And then in response, he says,
20 "Tom, we typically don't give out the thresholds
21 to stores because in DEA's eyes, it could look
22 like encouraging the stores to order the max."

23 Do you see that?

24 A. Yes.

1 Q. Do you remember we talked about
2 that earlier?

3 A. Yes.

4 Q. And we identified an e-mail where
5 you had just -- and you were in the practice of
6 just forwarding those e-mails to the stores that
7 contained the information that had those
8 thresholds, right?

9 A. Correct.

10 Q. Okay. And I assume you wouldn't
11 have done that if you didn't know that they
12 didn't want it to be shared, correct?

13 A. Well, it says typically they
14 don't, so, you know, it's -- it doesn't say they
15 don't and they can't.

16 Q. Okay. So -- but you made a
17 decision that it would be okay to share those
18 thresholds with the stores?

19 A. No one said we couldn't.

20 Q. Okay. And then you decided that
21 you would, right?

22 A. Yes.

23 Q. Okay. Did you continue sharing
24 that information with stores after that e-mail?

1 A. I don't recall.

2 Q. Did DDM ever consider whether it
3 should impose thresholds on its own stores prior
4 to Cardinal doing so?

5 A. I don't think we did.

6 - - -

7 (DDM-Nameth Exhibit 28 marked.)

8 - - -

9 Q. Okay. I'm going to hand you
10 Exhibit 28, which is DDM110147. This is an
11 e-mail from you to All Pharmacists, dated
12 September 24, 2013. The subject is "DEA
13 quantity purchase limits."

14 Do you see that?

15 A. Yes.

16 Q. And there's an attachment which
17 says "DDM DEA Limits."

18 Do you see that?

19 A. Yes.

20 Q. And that's actually attached here,
21 and it's a native document so there's no Bates
22 number. So it says -- you write, "All
23 Pharmacists, attached is specific store
24 information from Cardinal regarding purchase

1 limits on certain C-II drugs."

2 Do you see that?

3 A. Yes.

4 Q. Did you review this in preparation
5 for your deposition today?

6 A. I've seen it. I've seen this
7 before, yes.

8 Q. But did you see it in the last
9 week?

10 A. Yes.

11 Q. Okay. So this is referring to the
12 thresholds that Cardinal put on Schedule II
13 drugs for DDM stores, right?

14 A. Yes.

15 Q. Okay. "The column that states
16 oxycodone SBC is the threshold specifically for
17 oxycodone 15-milligram, 30-milligram. This is a
18 threshold within the total oxycodone family.
19 Both oxycodone and morphine limits are listed in
20 yellow."

21 Do you see that?

22 A. Yes.

23 Q. And so if we go to this attached
24 document, this would indicate what all the

1 thresholds were on each particular store,
2 correct?

3 A. Yes.

4 Q. Did you play any role in deciding
5 what these limits should be?

6 A. I did not.

7 Q. It says, "These figures are
8 determined from guidelines offered by the DEA."
9 Do you see that?

10 A. Yes.

11 Q. Are you familiar with those DEA
12 guidelines?

13 A. Specifically to these particular
14 drugs, no.

15 Q. Were you aware that the DEA had
16 guidelines regarding thresholds that should be
17 put on opioids prior to this time frame?

18 A. No.

19 Q. Okay. Then it says, "Many store
20 orders from Cardinal have recently been cut back
21 due to the purchase limits being placed on
22 them."

23 Do you see that?

24 A. Yes.

1 Q. So that would suggest that prior
2 to the imposition of Cardinal's thresholds, DDM
3 stores were ordering in excess of those
4 thresholds thereby causing them to be cut, fair?

5 A. Yes.

6 Q. Okay. "If you hit your Cardinal
7 limit, do not order from another supplier (Anda)
8 since the DEA may monitor your purchases and
9 investigate your purchase history."

10 Do you see that?

11 A. Mm-hmm. Yes.

12 Q. Did you ever have an instance
13 where a DDM store would hit their threshold with
14 Cardinal and then order from another supplier?

15 A. Not that I'm aware of.

16 Q. Would that be concerning to you if
17 they tried to circumvent those thresholds?

18 A. Yes.

19 Q. Okay. And, in fact, as you sit
20 here, that's not permitted, right?

21 A. Correct.

22 Q. Okay. It says, "These limits set
23 at Cardinal will roll over on the 22nd."

24 So that basically means they just

1 restarted on the 22nd of every month, right?

2 A. Yes.

3 - - -

4 (DDM-Nameth Exhibit 29 marked.)

5 - - -

6 Q. Okay. This is 29, which is
7 DDM0 -- I'm sorry. DDM168903. We're going to
8 start at the bottom. This is from Shirlene
9 Justus to Brandon Wilkins who was your Cardinal
10 rep, right?

11 A. Correct.

12 Q. Okay. And this says, "Discount
13 Drug Mart 18. This customer's order for 3,200
14 dosage units of oxycodone caused the customer to
15 exceed its max annual accrual limit for
16 oxycodone this accrual period."

17 So is this the kind of e-mail that
18 a store would get when they order -- they place
19 an order that would cause them to go over their
20 threshold?

21 A. This came from Cardinal to us.

22 Q. Right. But Cardinal would -- if
23 the store submitted an order that if filled
24 would put it over Cardinal's threshold --

1 A. Yes.

2 Q. -- the order would get cut?

3 A. Correct.

4 Q. Reported to the DEA suspicious?

5 A. Okay.

6 Q. And then you guys would get sent
7 this e-mail, right?

8 A. Yes.

9 Q. Okay. And, in fact, it says here,
10 "The order for 3,200 dosage units has been cut,
11 reported as suspicious to the DEA and will not
12 be shipped."

13 Do you see that?

14 A. Correct.

15 Q. So would Cardinal have been the
16 one who first reported an order placed by a DDM
17 store as suspicious to the DEA?

18 A. In this circumstance, yes.

19 Q. So that would have been the first
20 time that -- assuming this is the first one --
21 and I don't know that it is, but this context
22 where Cardinal's cutting orders that exceeded
23 thresholds, they would have been the first ones
24 to ever report an order placed by a DDM store as

1 suspicious to the DEA, correct?

2 A. Correct.

3 Q. Then it says, "Prior to that
4 order, the customer received 4,600 dosage units
5 of oxycodone for this accrual period. After
6 review of available information, I've determined
7 that a threshold adjustment is not warranted and
8 the customer's threshold will remain at 7,500."

9 Right?

10 And then the next section asks for
11 information that would warrant an increase,
12 right?

13 A. Yes.

14 Q. Okay. So if you go to the top,
15 Pete -- Brandon writes to you and to Pete -- I
16 assume this is him communicating this to you
17 guys. "Gentlemen, it's about that time of
18 month. Please see the below regarding 18's cut
19 oxycodone order."

20 Do you see that?

21 A. Yes.

22 Q. Was it pretty common around that
23 time of month to have store orders getting cut?

24 A. Well, I wouldn't say typically,

1 but -- and, again, we're looking at one or two
2 stores, because this e-mail only equates to one
3 store. It doesn't -- he would typically list
4 several stores if there was several stores
5 involved.

6 To my knowledge, there wasn't a
7 lengthy list of stores each month that orders
8 were being cut.

9 Q. Where would I go to look to see
10 how many stores had orders cut in any particular
11 month?

12 A. Cardinal.

13 Q. Cardinal would have that? Would
14 DDM have a record of these e-mails anywhere?

15 A. I doubt it.

16 Q. Did you ever print and file away
17 these e-mails when you got them?

18 A. No.

19 Q. Do you know if anybody else did?

20 A. I can't answer that.

21 Q. Did DDM have a policy or procedure
22 regarding retaining records regarding cut and
23 reported orders?

24 A. Not that I'm aware of.

1 Q. Okay. I mean, this e-mail
2 indicates that this order, which was placed by
3 store 18, is reported as suspicious to the DEA,
4 right?

5 A. Correct.

6 Q. And -- but you guys didn't keep
7 any documents at DDM reflecting the fact that
8 this order was deemed suspicious by somebody
9 else?

10 A. That's correct.

11 - - -

12 (DDM-Nameth Exhibit 30 marked.)

13 - - -

14 Q. Okay. Let's look at Exhibit 30,
15 which is DDM169973. We're going to start at the
16 bottom of this one. It's an e-mail from
17 Shirlene Justus again to Brandon Wilkins who
18 we've just been talking about, and it just so
19 happens that this is the same month as the last
20 e-mail, but it relates to Discount Drug Mart
21 number 2.

22 Do you see that at the bottom?

23 A. Yes.

24 Q. Okay. And if you go to the next

1 page, it says, "The customer's order for 1,200
2 units has caused the customer to exceed its
3 maximum limit. The order for 1,200 units was
4 cut, reported as suspicious to the DEA, and will
5 not be shipped."

6 Do you see that?

7 A. Yes.

8 Q. And then there's a determination
9 made that the threshold should remain as is,
10 right?

11 A. Correct.

12 Q. Okay. And if you go to the next
13 e-mail up, Brandon forwards this to you and to
14 Pete again, right?

15 A. Yes.

16 Q. And it says, "Pete and Tom, please
17 see below regarding number 2's cut oxycodone
18 order. The store may order up to 500 dosage
19 units prior to Wednesday."

20 Do you see that?

21 A. Yes.

22 Q. In fact, the store is being
23 informed how much more they can order without
24 having another order reported to the DEA as

1 suspicious, correct?

2 A. Correct.

3 Q. Okay. And then you respond or
4 actually you forwarded it, it looks like, to the
5 store, right?

6 A. Yes.

7 Q. And you said, "Hi Gang, Do not
8 order any extra Oxy/APAP. It is placing you
9 over the limit."

10 Right?

11 A. Yes.

12 Q. Okay. And you forwarded them all
13 the information they needed to see what their
14 maximum is, right, or what their threshold is?

15 A. I'm looking to see if that's on
16 here, what the threshold was.

17 Q. Yeah, it's on the back page.

18 A. Okay.

19 Q. 27,000?

20 A. Yes.

21 Q. All right. So they were real
22 close to their limit, they were only 500 off,
23 right?

24 A. Correct.

1 Q. And at the top, Chris writes back
2 and he says, "Hi Tom" -- who's Chris, by the
3 way?

4 A. Chief pharmacist at that store.

5 Q. Okay. So chief pharmacist at
6 number 2 writes back and says, "I am not
7 familiar with this process. Does this apply to
8 all oxycodone/APAP products/strengths? Reported
9 as suspicious to DEA?"

10 So it looks like your chief
11 pharmacist at number 2 doesn't have any idea
12 that there are limits on what he can order from
13 Cardinal; is that fair?

14 A. That's fair.

15 Q. Okay. And it also looks like he's
16 surprised that this order was reported as
17 suspicious to the DEA, correct?

18 A. Yes.

19 Q. Did you guys inform your stores
20 that there were thresholds on them?

21 A. I don't think that we actually
22 did.

23 Q. Okay.

24 - - -

1 (DDM-Nameth Exhibit 31 marked.)

2 - - -

3 BY MR. MULLIGAN:

4 Q. This is Exhibit 31, and it's
5 DDM87058. This is June 13 of 2014, Leslie Arend
6 e-mails Jason, you, and Pete. So I imagine
7 Jason is being phased in at this point; is that
8 fair?

9 A. Correct.

10 Q. Or he's already phased in?

11 A. He's already been there for quite
12 a while.

13 Q. And you're maybe being phased out?

14 A. Yes.

15 Q. Okay. It says, "Store 76 is
16 approaching their limit on oxycodone
17 hydrochloride. The thresholds were set on the
18 22nd."

19 Do you see that?

20 A. Yes.

21 Q. And actually they're reaching
22 their threshold almost ten days beforehand,
23 aren't they? Do you see the e-mail date of
24 June 13?

1 A. Yes.

2 Q. Okay. And if you look above, it
3 looks like, again, you forwarded this e-mail on,
4 right?

5 A. Mm-hmm.

6 Q. And, actually, the "to" line, it
7 says Karla Bartish. She's the one we were
8 talking about earlier, isn't she?

9 A. Yes.

10 Q. The one who said that what was
11 happening in her store was nuts?

12 A. Yes.

13 Q. Okay. And so you told her that
14 they're near the end of their limit of oxycodone
15 even though they're only a third of the way
16 through the month, right, or two-thirds of the
17 way through the month?

18 A. Two-thirds.

19 Q. And then you said, "Do you have a
20 plan to review or lower your oxy purchases? I
21 have to assume you are limiting sales to local
22 customers."

23 Right?

24 A. Correct.

1 Q. And that's just the way you speak,
2 right? You actually are saying, make sure
3 you --

4 A. Yes.

5 Q. Okay. Do you know whether they
6 were doing that?

7 A. It could be followed up by the
8 supervisor in that region. That was what he
9 should be doing.

10 Q. Did you do anything to personally
11 verify that all of your pharmacies were limiting
12 sales to local customers?

13 A. Other than notifying that's what
14 they should be doing.

15 Q. And after you told them that that
16 was DDM's policy, did you or anybody else ever
17 run any reports to determine whether individuals
18 were still filling prescriptions outside of
19 their geographic areas?

20 A. I don't recall.

21 Q. Okay. Maybe you did, maybe you
22 didn't?

23 A. Yeah.

24 Q. Okay. The last one, it says, "Are

1 you also filling Rx's at your pharmacy when other
2 pharmacies in the area are not?"

3 Do you see that?

4 A. Yes.

5 Q. Was that ever something that
6 occurred within the DDM system that you were
7 aware of?

8 A. No. We were just making sure that
9 people weren't coming to our stores because they
10 were being turned down at other stores.

11 - - -

12 (DDM-Nameth Exhibit 32 marked.)

13 - - -

14 MR. MULLIGAN: All right. This is
15 Exhibit 32. I apologize. This is
16 actually a collection of documents that
17 are all similar. So I'll read the Bates
18 on the top one, but that may not be all
19 that helpful to people. It's DDM
20 440516. But we'll have it on the screen
21 then.

22 BY MR. MULLIGAN:

23 Q. All right. So I'll represent to
24 you that I -- we looked and we found all these

1 that we could find, and I put them in
2 chronological order, which may prove to be more
3 onerous than putting them in order by store.

4 A. Okay.

5 Q. But have you seen this document
6 before?

7 A. Yes.

8 MR. JOHNSON: Just the one on the
9 front or --

10 Q. This type of document.

11 A. Yes.

12 Q. Okay. Did you create this
13 document?

14 A. No.

15 Q. Do you know who created this
16 document?

17 A. It was probably created at the
18 time that the rolling 12-month report was
19 created.

20 Q. Do you know who created that
21 report?

22 A. I can't say.

23 Q. Okay. So when you -- fair to say
24 when you became director of pharmacy operations,

1 you had to fill out -- you had to review and
2 fill out these reports?

3 A. Correct.

4 Q. When you were a chief pharmacist,
5 did you have to review and fill out these
6 reports?

7 A. I had to answer the reports.

8 Q. Okay. But when you were the chief
9 pharmacist on the other side of it, you got
10 these and you had to answer them?

11 A. Yes.

12 Q. Okay. So would it be fair to say
13 you're familiar with these?

14 A. Yes.

15 Q. Okay. All right. Let's look at
16 this first one. So this is Store 33, right?

17 A. Correct.

18 Q. And the date is 1/2/08. And
19 then -- and I won't read this for all of them
20 but it says, "The Drug Enforcement Agency" --
21 which is the U.S. Department of Justice -- "has
22 requested that Discount Drug Mart pharmacy
23 operations maintain records of controlled
24 substances purchased that exceed an average of

1 purchases calculated from the previous 12 months
2 or that deviate substantially from normal
3 average per month."

4 Right?

5 A. Yes.

6 Q. Okay. And so then it says, "The
7 December 2007 report indicates an increase in
8 purchases of" -- it looks like that's
9 hydrocodone?

10 A. Yes.

11 Q. Okay. "Your average monthly
12 purchase of this item are two bottles. This
13 month ten bottles were ordered."

14 Do you see that?

15 A. Yes.

16 Q. That's a pretty substantial
17 increase, right?

18 A. Yes.

19 Q. Okay. Would this say that -- when
20 it says the "average monthly purchases," is that
21 over the last 12 months?

22 A. Say again.

23 Q. So see where it says "your average
24 monthly purchases of this item are two bottles"?

1 A. Yes.

2 Q. Is that information that you would
3 have taken off of the 12-month rolling average
4 and put on here?

5 A. Yes.

6 Q. Okay. So this store was averaging
7 two bottles a month and then this month -- well,
8 the month before this, so maybe December, they
9 ordered ten?

10 A. Correct.

11 Q. Okay. So then it says, "Please
12 verify this quantity and provide appropriate
13 explanation as to the necessity of the increase.
14 Thank you for your immediate response to this
15 request."

16 Do you see that?

17 A. Yes.

18 Q. So you would have sent -- when we
19 were talking earlier about your -- the monthly
20 report that you would review?

21 A. Yes.

22 Q. You would decide whether an order
23 that showed up there warranted more
24 investigation, right?

1 A. Correct.

2 Q. And if it did, you would send this
3 form out, right?

4 A. Correct.

5 Q. Okay. And you would require the
6 chief pharmacist to provide a -- to verify the
7 quantity and provide an appropriate explanation
8 for the increase, right?

9 A. That's right.

10 Q. Okay. So down below, Store 33.
11 It looks like the chief pharmacist is Andrew --
12 do you know his last name?

13 A. Hawk.

14 Q. Okay.

15 A. Sr.

16 Q. Okay. And he completed this, it
17 looks like, about ten days later. And so his
18 explanation of the increased order was "spike in
19 Rx filled."

20 Do you see that?

21 A. Yes, I do.

22 Q. Okay. Would that be a sufficient
23 and appropriate explanation as to the increase?

24 A. Part and parcel of. What I would

1 have to do then -- if it didn't meet my --
2 didn't answer my question as to why, I would
3 also follow up and see how many bottles were on
4 the shelf as opposed to the dispensing
5 information.

6 Q. Okay. Just looking at this form
7 now, as you sit here today, was the explanation
8 that he provided to you appropriate and
9 sufficient to warrant this order not being
10 reported?

11 A. He actually tells me that shelf
12 inventory on here and also the script --
13 increasing script count, so what I'm looking for
14 is, do you still -- where did those ten bottles
15 go, and he's telling me that seven and three
16 quarters of the bottles are still on his shelf.

17 Q. Okay. But the spike in Rx's, you
18 wouldn't do anything to verify with him or make
19 sure that that spike wasn't associated with
20 illegitimate prescriptions or diversion, right?

21 You would just trust --

22 A. Nothing, per se.

23 Q. You would trust his judgment,
24 right?

1 A. Yes.

2 Q. Let's go to the next page. This
3 one is DDM440506. This is store 5. Date is
4 May 5, 2008. The same form, right?

5 A. Yes.

6 Q. Okay. And so in this instance,
7 it's -- your report showed that they ordered
8 hydrocodone. They usually ordered three bottles
9 and this month they ordered eleven, right?

10 A. Correct.

11 Q. And so that -- that triggered
12 your -- that triggered you to send them a
13 report, right?

14 A. Correct.

15 Q. Okay. And the explanation that --
16 is it John?

17 A. Vedrody.

18 Q. Vedrody. His -- well, did you
19 ever have any issues with John Vedrody?

20 A. No.

21 Q. Okay. His explanation was, "Had
22 two or three prescriptions for larger amounts
23 than usual. Quantities were verified with
24 physicians."

1 Right?

2 A. Correct.

3 Q. Is that a sufficient explanation
4 for you to confirm that there was no diversion
5 taking place associated with this increase?

6 A. Based on the bottle size at that
7 particular point, this particular drug and this
8 NDC were bottles of 100. So they had several
9 prescriptions that were increased. I might have
10 called him back and asked him how many were on
11 the shelf because if I didn't get that
12 information, I might have placed a phone call.

13 But at that particular time, I
14 can't say what exactly my follow up would have
15 been.

16 Q. Okay. Do you remember the DEA
17 document said that a suspicious order is one of
18 unusual size?

19 A. Yes.

20 Q. Okay. You would agree that an
21 eleven-bottle order, when the average over the
22 last 12 months was three, would be one of
23 unusual size, correct?

24 A. Yes.

1 Q. And, in fact, it was so unusual
2 that it caused you to send him a form that he
3 needed to fill out, right?

4 A. Right.

5 Q. Did you report this to the DEA as
6 suspicious or possibly suspicious?

7 A. Did not.

8 Q. Okay. Any reason why?

9 A. Because I didn't think it was a
10 suspicious order.

11 Q. Because you trusted your
12 pharmacist?

13 A. Yeah.

14 Q. Okay.

15 A. Also, it would have shown up on
16 the monthly report, on the store's monthly
17 report if there were missing prescriptions --
18 missing bottles.

19 Q. That's an inventory thing, right?

20 A. More or less, yes.

21 Q. Okay. So here's the part that I
22 don't understand. So if the average is three
23 bottles a month, you said this is -- NDC is
24 associated with 100 tab counts. So they're

1 averaging 300 tabs a month, right?

2 A. Correct.

3 Q. And then -- that's for a whole
4 year, right?

5 A. Yes.

6 Q. And then this month they ordered
7 eleven bottles, that's 1100 tablets, right?

8 A. Correct.

9 Q. And his justification for an
10 increase in 800 tablets is that he had two or
11 three prescriptions for larger than usual. Is
12 that concerning to you?

13 A. Well, it is enough to --
14 concerning to me to send the report out, but
15 what it does tell me is that he had several
16 prescriptions where he might have had several
17 hundred prescriptions more than he did prior.
18 So what it doesn't say is how many are still on
19 his shelf.

20 I want to know where they -- if he
21 ordered them, and knowing John, if he didn't
22 have enough to fulfill his orders, that
23 particular month, if he was running real low
24 because he got two or three hundred scripts --

1 two or three hundred pills and he was running
2 out, he would have a tendency to order heavy --
3 heavier.

4 And then what I would like to see
5 in follow up would be what happened the
6 following month. He didn't have -- if he
7 didn't -- I don't suppose he had a suspicious
8 order, because the quantity on hand would last
9 him maybe two months instead of the one, so ...

10 Q. Did DDM have any policies and
11 procedures about maximum quantities on hand that
12 a store could have?

13 A. No.

14 Q. Despite the fact that you guys had
15 evidence that pharmacy employees were diverting
16 drugs out of the stores, right?

17 A. We had no policy.

18 Q. Okay. Do you think that would
19 have maybe helped cut down on diversion if you
20 had limited the amount of quantities that were
21 in the stores?

22 A. I don't think so, because you're
23 still going to get the same diversion that we
24 were seeing.

1 Q. So you don't think it mattered?

2 A. I think the theft is going to
3 occur whether I have five bottles on the shelf
4 or three bottles on the shelf.

5 Q. Well, if there's a theft and you
6 have one bottle, then you have one bottle out in
7 the public, right? But if you have a theft and
8 there's ten bottles, then you have ten bottles
9 out in the public, don't you?

10 A. But one bottle would not be enough
11 to sustain our patients for a month.

12 Q. Okay.

13 A. So one prescription could be over
14 100. It could be 120, which is a typical
15 month's supply.

16 Q. Did any of your stores get in the
17 habit of carrying larger stocks of opioids in
18 their pharmacies?

19 A. I can't say that they got into the
20 habit.

21 Q. Okay. Let's go to the next one,
22 which is DDM440517. This is store 35 again.
23 Remember we talked about them?

24 A. Yes.

1 Q. Somewhat of a problem store,
2 right?

3 MR. JOHNSON: Objection.

4 MR. MULLIGAN: I think he
5 testified to that.

6 MR. JOHNSON: I don't know.

7 Q. Would you agree?

8 A. I wouldn't consider it a problem
9 store.

10 Q. Okay. So if earlier you testified
11 that 35 was a problem store, are you changing
12 that testimony now?

13 MR. JOHNSON: I don't know that he
14 did.

15 A. I don't know if I did.

16 Q. Okay. We'll let the record speak
17 for itself. It's been a long day.

18 All right. So store 35 in
19 October -- I'm sorry. November 1 of '11, they
20 ordered another hydrocodone report, right?

21 A. Correct.

22 Q. And this is 6.8 bottles and then
23 this month they ordered 14, right?

24 A. Correct.

1 Q. Okay. Is their explanation down
2 here sufficient or appropriate for you?

3 A. So I'm trying to read his
4 handwriting.

5 Q. Let me do this maybe in a
6 different -- in a more fast way, actually. You
7 guys never reported any order as suspicious,
8 right?

9 A. Correct.

10 Q. So I assume that any explanation
11 that was down on these documents would have been
12 adequate?

13 A. Correct.

14 Q. Okay.

15 A. He is -- he is telling me in this
16 how much he has left on his shelf, which is
17 important to me, because essentially what he's
18 doing, he's ordering a high quantity but that
19 doesn't mean that they're diverted, so to speak.

20 Q. Okay. But just to be fair and so
21 that I don't have to walk you through all these,
22 to the extent that you guys never reported
23 anything as suspicious, these explanations were
24 sufficient for you?

1 A. Yes.

2 Q. Okay. And you were the primary
3 person who sent these out and reviewed them?

4 A. Yes.

5 Q. And determined that they weren't
6 suspicious?

7 A. Correct.

8 Q. Okay. And a number of these, the
9 pharmacist would say something like, "see
10 attached," and then they'd have a printout of
11 their prescriptions?

12 A. Correct.

13 Q. And so basically that would -- was
14 something along the lines of, "I have a lot of
15 prescriptions, I need to fill them" --

16 A. Yes.

17 Q. -- you know, here's my
18 justification?

19 A. Yes.

20 Q. And it was up to the pharmacist to
21 determine whether those prescriptions were
22 legitimate or illegitimate, fair?

23 A. Yes.

24 Q. Okay. And you didn't do anything

1 to confirm or look specifically at those
2 prescriptions to make sure they were
3 appropriate, right?

4 A. Other than the supervisors going
5 to the stores and randomly checking them, no.

6 Q. Store supervisors randomly check
7 prescriptions?

8 A. Yes.

9 Q. Were they pharmacists?

10 A. Yes.

11 Q. So the chief pharmacist you mean?

12 A. No, the supervisors. Supervisors
13 were all pharmacists, and their duties was to go
14 to their specified stores, and part of their
15 responsibilities was to --

16 Q. Regional supervisors?

17 A. Yes.

18 Q. Okay. But that would be like a
19 spot-check situation, right?

20 A. Yes, yes.

21 Q. Obviously there's some subjective
22 judgment that you exercised in this suspicious
23 order monitoring policies and procedures, right?

24 A. Correct.

1 Q. And -- so regarding the things
2 we've talked about today, did the buck stop with
3 you on that?

4 A. Primarily, unless I had questions,
5 then I'd run it by Pete or whatever, but yes.
6 Primarily yes.

7 Q. Unless you pulled Pete in --

8 A. Yes.

9 Q. -- it was something that was --
10 DDM referred to your judgment on things you were
11 in charge of, right?

12 A. Right.

13 Q. And then you deferred to the
14 judgment of the pharmacist to detect and prevent
15 diversion at the store level, correct?

16 A. Yes.

17 Q. Okay. So we can look at the
18 specific pages in here if you'd like to. One of
19 the things I just wanted to ask you was, in this
20 collection of documents, store 35 actually has
21 four of them, and there's one on November 1,
22 '11, December 3 of '12, and November 11 of '13.

23 And if you look at the '11 one,
24 their average was 6.8 bottles and then they

1 ordered 14. In '12, they averaged 5.6 and they
2 ordered 12. But then in '13, they averaged 11.9
3 and they ordered 26. And, again, I can point
4 you to those pages.

5 But I'm just curious, would you
6 ever look back in your file when you got -- when
7 a store showed up on a report to see what --
8 which -- if you sent any of these in the past
9 and what they looked like?

10 A. I don't believe I ever did.

11 Q. Okay. Do you think that would
12 have been helpful for you to see kind of where
13 they came from and how much their prescriptions
14 had grown over time?

15 A. We knew that this particular
16 store, and a lot of our stores, were growing
17 over time. This particular store was remodeled
18 and they had a large influx of patients. So
19 they were growing exponentially. So their
20 orders were growing. So it seemed logical that
21 their controlled drugs would grow with them.
22 So ...

23 Q. When were they remodeled?

24 A. Maybe '12, but I'd have to -- I'd

1 have to review that.

2 Q. Okay.

3 A. Well, it's probably before that,
4 slightly before that.

5 Q. Okay. So I'll just represent that
6 this packet here has ten of these forms, and we
7 scoured DDM's production to find all the ones we
8 could.

9 Would you expect there to be more
10 than ten forms based on the fact that this
11 covers a time frame of 2008 to 2014?

12 A. Possibly, yes.

13 Q. How many reports would you -- how
14 many of these documents would you send out,
15 let's say, on an annual basis?

16 A. There could have been -- depending
17 on the year. I mean, they varied, but there
18 could have been ten or more.

19 Q. Did you send at least one a month?

20 A. There were some months that we
21 didn't send any, so I can't say we send at least
22 one a month. But there were some months when I
23 sent two or three. So, you know, for me to go
24 back to ten or twelve years ago, you know, it's

1 a little bit fuzzy on what happened back --
2 specifically back then, how many I sent out.
3 But I can recall that there were numerous times
4 when we'd send more than one.

5 Q. Okay. So let's just take your
6 average of ten over a six-year -- six-,
7 seven-year period, you'd expect there to be 60
8 to 70 of these, right, not ten?

9 A. Yes.

10 Q. Okay. Was there any type of
11 retention -- document retention policy in place
12 for these documents?

13 A. What they would -- they'd be
14 filed.

15 Q. Where would they be?

16 A. We'd give them to pharmacy
17 operations gals to file, and they went into --
18 after two years or so, they got sent somewhere.
19 I don't know where.

20 MR. MULLIGAN: Okay. Why don't we
21 take a quick five-minute break. Let me
22 make sure I've got nothing else. But I
23 think we're pretty much done. Sound
24 good?

1 THE VIDEOGRAPHER: We're going off
2 the record at 4:48.

3 (Recess taken.)

4 THE VIDEOGRAPHER: We're back on
5 the record at 4:52.

6 - - -

7 (DDM-Nameth Exhibit 33 marked.)

8 - - -

9 BY MR. MULLIGAN:

10 Q. All right. I'm handing you the
11 last exhibit, which is Exhibit 33, and it's a --
12 you can actually just look at the sheet if you
13 want, but it's a DDM organizational chart.

14 Do you see that?

15 A. Yes, I do.

16 Q. Where would you put yourself if
17 you were still -- I mean, in your position as of
18 2014?

19 A. Under Pete Ratycz as vice
20 president.

21 Q. Okay. So just a line down from
22 Pete?

23 A. Correct.

24 Q. Okay. And what would you put in

1 your box if you had to put a little bullet with
2 the stuff you did?

3 A. Third-party contracting.

4 Q. Okay.

5 A. Controlled drug monitoring,
6 pharmacy operations in general, and then there's
7 a whole lot of things that fall under pharmacy
8 operations.

9 Q. Okay.

10 A. Anything and everything.

11 Q. Is there anybody else on here that
12 was involved in controlled drug monitoring,
13 other than Pete, when you would escalate things
14 to him?

15 A. Well, Jason was -- who was --

16 Q. Who took over?

17 A. Yeah. Other than Jason, no.

18 Q. Okay.

19 A. Jill.

20 Q. Right. Who's Mike Eby?

21 A. Mike now is in -- he used to be in
22 human resources. Now, he's VP of finance.

23 Q. Do you know whether Mike has any
24 involvement in suspicious order monitoring or

1 preventing diversion?

2 A. Not to my knowledge.

3 Q. Okay. Who's Laura Taylor?

4 A. She is the pharmacy operations --
5 she worked under actually myself and Jason. She
6 was -- I don't know what the title exactly is
7 now, but ...

8 Q. Is she still there?

9 A. Yeah, she is.

10 Q. And did she assist you in any way
11 in reviewing that 12-month rolling report or
12 sending out these forms to the chief pharmacist?

13 A. She did not review, but she did
14 send them to the stores, and then it was her
15 duty to make sure then on a follow-up that we
16 got them all back.

17 Q. Okay. So she was sort of --

18 A. And file themselves afterwards,
19 so ...

20 Q. She was more the messenger and the
21 filer?

22 A. Yes.

23 Q. She didn't exercise any judgment
24 or ...

1 A. No, no.

2 Q. Okay. Was John Gans ever involved
3 in any evaluation of diversion at the store
4 level?

5 A. Not unless it was mentioned during
6 the board meeting.

7 Q. Okay.

8 A. So I doubt if he was involved in
9 any policy making, but ...

10 Q. What about any of the Boodjehs?

11 A. The same. No. He was -- board
12 meetings, if it was mentioned there, yes. As
13 far as policy making, no.

14 Q. So if you look at Doug Boodjeh on
15 here under chief operating officer, he has
16 pharmacy listed there, correct?

17 A. Yes.

18 Q. Did he play any role in crafting,
19 evaluating, or analyzing DDM's suspicious order
20 monitoring policies and procedures at any time?

21 A. Not that I'm aware of.

22 Q. Did you ever participating in a
23 discussion regarding DDM's suspicious order
24 monitoring policies and procedures with either

1 John Gans or Doug Boodjeh?

2 A. Did I?

3 Q. Yeah.

4 A. No.

5 Q. Do you know if anybody else did?

6 A. I can't answer that.

7 Q. Why is that? You don't know?

8 A. I don't know.

9 MR. MULLIGAN: Okay. That's it.

10 MR. JOHNSON: Great.

11 MR. MULLIGAN: Thank you for your
12 time.

13 THE WITNESS: Thank you.

14 MR. MULLIGAN: We can go off the
15 record.

16 THE VIDEOGRAPHER: Going off the
17 record at 4:56.

18 (Signature not waived.)

19 - - -

20 Thereupon, at 4:56 p.m., on Monday,
21 January 7, 2019, the deposition was concluded.

22 - - -

23

24

1 CERTIFICATE

2 STATE OF OHIO :

SS:

3 COUNTY OF _____:

4

5 I, TOM NAMETH, do hereby certify that I have
6 read the foregoing transcript of my cross-examination
7 given on January 7, 2019; that together with the
8 correction page attached hereto noting changes in form
9 or substance, if any, it is true and correct.

10

TOM NAMETH

11

12 I do hereby certify that the foregoing
13 transcript of the cross-examination of TOM NAMETH was
14 submitted to the witness for reading and signing; that
15 after he had stated to the undersigned Notary Public
16 that he had read and examined his cross-examination,
17 he signed the same in my presence on the _____ day
18 of _____, 2019.

19

NOTARY PUBLIC - STATE OF OHIO

20

21
22 My Commission Expires:

23 _____, _____.
24

CERTIFICATE

STATE OF OHIO

:

SS:

COUNTY OF FRANKLIN :

I, Carol A. Kirk, a Registered Merit Reporter and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named TOM NAMETH was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the deposition then given by him was by me reduced to stenotype in the presence of said witness; that the foregoing is a true and correct transcript of the deposition so given by him; that the deposition was taken at the time and place in the caption specified and was completed without adjournment; and that I am in no way related to or employed by any attorney or party hereto or financially interested in the action; and I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio on this 10th day of January 2019.

CAROL A. KIRK, RMR

NOTARY PUBLIC - STATE OF OHIO

My Commission Expires: April 9, 2022.

- - -

1 DEPOSITION ERRATA SHEET

2 I, TOM NAMETH, have read the transcript
of my deposition taken on the 7th day of January 2019,
3 or the same has been read to me. I request that the
following changes be entered upon the record for the
4 reasons so indicated. I have signed the signature
page and authorize you to attach the same to the
5 original transcript.

6 Page Line Correction or Change and Reason There:

7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	Date _____	Signature _____	